SITI ZABEDAH KASIM v. AKMAL NADZIM ABDULLAH & ORS

HIGH COURT MALAYA, KUALA LUMPUR
SU TIANG JOO J
[CIVIL SUIT NO: WA-21NCVC-15-04-2019]
29 SEPTEMBER 2025

Abstract – *(i) Enforcement agencies must strictly adhere to all statutory and constitutional requirements before exercising powers of raid, search or arrest. Failure to comply with the mandatory procedures render the entire action unlawful; (ii) An advocate and solicitor should be able to question any searches, raids or seizures which are illegal and ultra vires the powers under which an enforcement agency seeks to act. Questioning authority in this capacity does not constitute 'obstruction of a public officer' under s. 186 of the Penal Code if the enforcement officers were not lawfully discharging their duties.*

TORT: *False imprisonment – Claim – Claimant attended event in capacity as advocate and solicitor – Fund-raising dinner held by trans women with theme 'Miss World' – Event raided by religious enforcement officers – Claimant detained, arrested and charged at Magistrates' Court – Offence of obstructing public officer under s. 186 of Penal Code – Whether there was false imprisonment by religious enforcement officers*

TORT: *Misfeasance in public office – Claim – Claimant attended event in capacity as advocate and solicitor – Fund-raising dinner held by trans women with theme 'Miss World' – Event raided by religious enforcement officers – Claimant detained, arrested and charged at Magistrates' Court – Offence of obstructing public officer under s. 186 of Penal Code – Whether there was misfeasance in public office by religious enforcement officers*

TORT: *Malicious prosecution – Claim – Claimant attended event in capacity as advocate and solicitor – Fund-raising dinner held by trans women with theme 'Miss World' – Event raided by religious enforcement officers – Claimant detained, arrested and charged at Magistrates' Court – Offence of obstructing public officer under s. 186 of Penal Code – Whether there was malicious prosecution in prosecuting claimant – Whether defence of good faith provided by Government Proceedings Act 1956 available to tortfeasors*

TORT: *Vicarious liability – Claim – Claim for false imprisonment, misfeasance in public office and malicious prosecution – Claimant attended event in capacity as advocate and solicitor – Fund-raising dinner held by trans women with theme 'Miss World' – Event raided by religious enforcement officers – Claimant detained, arrested and charged at Magistrates' Court – Offence of obstructing public officer under s. 186 of Penal Code – Whether there was vicarious liability by Government of Malaysia and superior officers for tortious acts committed by subordinates*

A ***CONSTITUTIONAL LAW:*** *Fundamental liberties – Personal liberty – Claimant attended event in capacity as advocate and solicitor – Fund-raising dinner held by trans women with theme 'Miss World' – Event raided by religious enforcement officers – Claimant detained, arrested and charged at Magistrates' Court – Offence of obstructing public officer under s. 186 of Penal Code – Whether there was breach*
B *of personal liberty – Federal Constitution, art. 5(1)*

The plaintiff was invited to attend a private, fund-raising dinner held by trans women, at the Renaissance Hotel, Kuala Lumpur ('hotel') ('event'). The theme of the event was 'Miss World'. The plaintiff attended the event in her capacity as an advocate and solicitor as, whenever trans women had events,
C they have been frequently raided by the religious authorities. Hence, for that particular night, a lawyer was needed on standby in the event there would be a raid by the religious authorities. As it happened, the first to 14th defendants, who were Religious Enforcement Officers ('REOs') of the Majlis Agama Islam Wilayah Persekutuan (JAWI), had carried out a raid at the
D hotel. The plaintiff made it known to the first and second defendants from the outset that she was an advocate and solicitor and asked whether the event had contravened any law. The first defendant replied that the event contravened a fatwa as there was a 'Miss World' competition being held at the event. The plaintiff responded that it was simply a mock show, a
E gimmick theme for the dinner and it was not an actual competition. The first to 14th defendants did not allow the plaintiff and the other attendees to leave the ballroom. The plaintiff repeatedly asked the second defendant whether they had a warrant to enter the premises. Both the first and second defendants said that it was a sizeable offence but did not specify what was the alleged conduct that amounted to a sizeable offence. The plaintiff was then
F threatened by the first defendant that he could arrest her for obstructing his duties. While the attendees were later allowed to leave the room, the first defendant specifically told the plaintiff and the organiser of the event ('Ira Sofea') that they could not leave as they were both under arrest. The plaintiff was detained, arrested and brought to the Magistrates' Court where she was
G charged under s. 186 of the Penal Code ('PC') for obstructing a public officer. The Magistrate, however, acquitted and discharged the plaintiff and the prosecution's appeal to the High Court was struck out. Hence, the present claim by the plaintiff against the defendants. The plaintiff claimed for: (i) false imprisonment and misfeasance in public office, against the first to 14th
H defendants, for her detention and subsequent arrest; (ii) malicious prosecution, against the police investigating officer ('20th defendant') and the Deputy Public Prosecutors ('22nd and 24th defendants') from the Attorney General's Chambers, for the subsequent prosecution against her under s. 186 of the PC; and (iii) vicarious liability against (a) the Chief Religious
I Enforcement Officer ('17th defendant') and the Minister in the Prime Minister's Office responsible for the management of Islamic Affairs in the Federal Territories ('18th defendant'), for the torts committed against her by

the first to 14th defendants; (b) the Attorney General ('21st defendant'), for the tort committed against her by the 22nd and 24th defendants; and (c) the Government of Malaysia ('19th defendant'), for all the torts committed against her by the first to 15th defendants and the 20th, 21st, 22nd and 24th defendants by reason of them being civil servants.

Held (allowing claim; awarding plaintiff RM100,000):

(1) The initiation of the raid by the 17th defendant, through its REOs, *ie*, the first to 14th defendants, was fundamentally flawed for failure to comply with the required procedure prescribed by s. 54(1) and (2) of the Administration of Islamic Law (Federal Territories) Act 1993 ('AILFTA') and, in particular, the statutory requirements of Form 5, as prescribed by the Second Schedule to the Syariah Criminal Procedure (Federal Territories) Act 1997. A scrutiny of the impugned Form 5 showed that the prescribed statutory requirements of setting out the name, identity card, particulars, age, occupation and address of the informant were not set out. The statutorily required signature of the informant was also not affixed onto the Form 5. (paras 93 & 95)

(2) The burden of proof lay on the defendants to prove that the raid was in accordance with the statutory requirements and, this, they failed to do. After all, they proceeded to carry out a raid on the strength of powers said to be given to them. Surely it was for them to first satisfy themselves and be able to prove that they had complied with the necessary statutory requirements before exercising the powers entrusted upon them. The reliance by the defendants, on the authorities cited supporting the test of 'reasonable suspicion' for the s. 186 of the PC offence that accompanied the power of arrest given to the police was misconceived as the defendants had not passed the first hurdle of justifying their presence at the event and subsequent detention of the attendees. (para 100)

(3) The fatwa, gazetted under P.U.(B) 51 on 8 February 1996, pursuant to s. 34 of the AILFTA, struck as 'Pertandingan Ratu Cantik' which was that of a beauty queen contest. Upon a plain reading of this statutory provision, it was an offence to participate, host or contribute in any manner of contribution towards the hosting of any beauty queen contest. The word 'queen' connotes a woman and this provision struck at any beauty competition participated, hosted or contributed by any females. The participants of the beauty pageant in this case, however, were all men dressed as ladies or 'mak nyah'. The first to 14th defendants, under the supervision of the 15th defendant, knew right from the outset that it was not a beauty queen competition involving female participants but decided, nonetheless, to proceed to disrupt the event. The 20th to 22nd and 24th defendants similarly participated in the prosecution of the

plaintiff under s. 186 of the PC, knowing or were recklessly indifferent as to whether the first to 15th defendants were lawfully discharging public functions. (paras 110, 117 & 119)

(4) The plaintiff had informed the first defendant that she was a lawyer. An express assertion by a solicitor to act for a client is sufficient to give rise to a solicitor-client relationship even if it is a single act. The duty of a lawyer includes being able to reject any searches, raids or seizures which are illegal and *ultra vires* the powers under which an enforcement agency seeks to act. Prevention is better than cure – it was right for the plaintiff, in the exercise of her profession as an advocate and solicitor, to do her best to try to discuss with the REOs, to prevent the trans women against arbitrary and unlawful detention. (paras 122, 140 & 141)

(5) The plaintiff had proven, on a balance of probabilities, that she was arrested and subjected to false imprisonment by the first and second defendants, when she stepped out of the ballroom together with Ira Sofea right up to until they were taken to the police station before she was released on police bond. There had also been misfeasance in public office by the first to 14th defendants in carrying out the raid, confining the participants in the ballroom during the event, without ensuring that the huge power they had was being enforced lawfully and, in the process, subjecting the plaintiff to being deprived of personal liberty whilst she was discharging her duty as an advocate and solicitor. (paras 145 & 148)

(6) The plaintiff had proven, on a balance of probabilities, the necessary ingredients for a cause of action grounded on malicious prosecution. The person who set the criminal law in motion was, in fact, the second defendant who lodged the police report against the plaintiff. The 20th, 21st, 22nd and 24th defendants were joint tortfeasors, together with the DPP who initiated the prosecution and it was not necessary to sue each and every joint tortfeasor. The defendants sought to rely upon the defence of good faith provided by the Government Proceedings Act 1956. Such a defence was unacceptable when the initiation of the raid was not done in accordance with the law when the REOs could not explain why they were not armed with a search or arrest warrant when the raid was premised upon a non-sizeable offence under s. 28 of the Syariah Criminal Offences (Federal Territories) Act 1997, as set out in the impugned Form 5 and even if, at all, the impugned Form 5 was valid. (paras 160 & 161)

(7) With the first to 14th defendants purporting to act under the supervision and behest of the 15th defendant, and for and on behalf of the 17th to 19th defendants, vicarious liability was found against them. Similarly, vicarious liability was found against the 19th defendant for the acts of the 20th defendant and against the 19th and 21st defendants for the acts of the 22nd and 24th defendants. (para 164)

Case(s) referred to:

Adiswaran Tharumaputrintar v. PP & Other Appeals [2014] 3 CLJ 813 FC ***(refd)***
Alwie Handoyo v. Tjong Very Sumito & Another Appeal [2013] SGCA 44 ***(refd)***
Bar Malaysia v. Ketua Pengarah Hasil Dalam Negeri [2018] 4 CLJ 635 HC ***(refd)***
Chin Hein Chong v. Tey Sin Sze & Anor [2017] 4 CLJ 348 HC ***(refd)***
Chong Thain Vun v. Watson & Anor And Other Cases [1967] CLJU 29; [1967] 1 LNS 29 HC ***(refd)***
CIMB Islamic Bank Bhd v. Ravichantiran Ganesan [2020] CLJU 415; [2020] 1 LNS 415 HC ***(refd)***
CIMB Islamic Trustee Bhd v. Pendaftar Hakmilik Negeri Selangor & Ors [2022] 4 CLJ 499 CA ***(refd)***
Darshan Singh Khaira v. Majlis Peguam Malaysia [2021] 10 CLJ 497 FC ***(refd)***
Datuk Seri Khalid Abu Bakar & Ors v. N Indra P Nallathamby & Another Appeal [2014] 9 CLJ 15 CA ***(refd)***
Easy Vista Sdn Bhd v. Tenaga Nasional Bhd [2021] 1 CLJ 453 CA ***(refd)***
Gin Poh Holdings Sdn Bhd v. The Government Of The State Of Penang & Ors [2018] 4 CLJ 1 FC ***(refd)***
Government Of Malaysia v. Lim Kit Siang & Another Case [1988] 1 CLJ 219; [1988] 1 CLJ (Rep) 63 SC ***(refd)***
Government Of Malaysia v. Mohamed Amin Hassan [1985] CLJU 79; [1985] 1 LNS 79 FC ***(refd)***
Gurbachan Singh Bagawan Singh & Ors v. Vellasamy Pennusamy & Other Appeals [2015] 1 CLJ 719 FC ***(refd)***
Haris Fathillah Mohamed Ibrahim & Ors v. Tan Sri Dato' Sri Hj Azam Baki & Ors [2023] 3 CLJ 653 FC ***(refd)***
Hartalega Sdn Bhd & Anor v. Kerajaan Negeri Selangor & Ors [2022] 7 CLJ 735 HC ***(refd)***
Hj Elias Hanan v. Hj Md Noor Salleh [2002] 8 CLJ 448 HC ***(refd)***
Kam Teck Soon v. Timbalan Menteri Dalam Negeri, Malaysia And Other Appeals [2003] 1 CLJ 225 FC ***(dist)***
Kerajaan Negeri Selangor & Ors v. Sagong Tasi & Ors [2005] 4 CLJ 169 CA ***(refd)***
Ketheeswaran Kanagaratnam & Anor v. PP [2024] 2 CLJ 341 FC ***(refd)***
Ketua Pengarah Hasil Dalam Negeri v. Bar Malaysia [2022] 1 CLJ 81 CA ***(refd)***
Ketua Polis Negara & Ors v. Nurasmira Maulat Jaffar & Ors And Other Appeals [2018] 1 CLJ 585 FC ***(refd)***
Khoon Chye Hin v. PP [1961] CLJU 41; [1961] 1 LNS 41 HC ***(refd)***
Kijal Resort Sdn Bhd v. Pentadbir Tanah Kemaman & Anor [2015] 3 CLJ 861 FC ***(refd)***
Komallapalli Subramanyam & Anor v. Rajdeep Sharma Singh & Ors [2024] CLJU 2034 HC ***(refd)***
Latheefa Beebi Koya & Anor v. Suruhanjaya Pencegahan Rasuah Malaysia & Ors [2013] 8 CLJ 855 HC ***(refd)***
Law Chen Soon & Anor v. Lee Fook Leong [2021] CLJU 2418; [2021] 1 LNS 2418 HC ***(refd)***
Lee Kuang Guat v. Chiang Woei Chien [2021] 3 CLJ 237 CA ***(refd)***
Lei Meng v. Inspektor Wayandiana Abdullah & Ors And Other Appeals [2022] 3 CLJ 177 FC ***(refd)***
Lim Peng Khoon v. Tea Chun Hia & Ors [2023] CLJU 722; [2023] 1 LNS 722 HC ***(refd)***
Maslinda Ishak v. Mohd Tahir Osman & Ors [2009] 6 CLJ 653 CA ***(refd)***

Medcalf v. Mardell & Ors [2003] 1 AC 120 ***(refd)***
N Indra Nallathamby v. Datuk Seri Khalid Abu Bakar & Ors [2013] 6 CLJ 272 HC ***(refd)***
Natthanan Yoochomsuk & Anor v. Insp Mohd Noor Husri Johari & Ors [2024] 9 CLJ 546 HC ***(refd)***
Pendaftar Hakmilik Negeri Selangor & Ors v. Shaifulizam Mohd Saleh & Anor And Another Appeal [2020] 5 CLJ 595 CA ***(refd)***
Pengarah Tanah Dan Galian, Wilayah Persekutuan v. Sri Lempah Enterprise Sdn Bhd [1978] CLJU 143; [1978] 1 LNS 143 FC ***(refd)***
Pett v. Greyhound Racing Association Ltd [1969] 1 QB 125 ***(refd)***
PP v. Emran Nasir [1986] CLJU 69; [1986] 1 LNS 69 HC ***(refd)***
PP v. Mohamad Sabu [2012] 5 CLJ 246 HC ***(refd)***
PP v. Rezeka Ravi [2023] CLJU 1624; [2023] 1 LNS 1624 HC ***(refd)***
PP v. Tan Tatt Eek & Other Appeals [2005] 1 CLJ 713 FC ***(refd)***
Rawther v. Abdul Kareem [1966] CLJU 154; [1966] 1 LNS 154 FC ***(refd)***
Regina (Thompson) v. Chief Constable Of Northumbria Police [2001] 1 WLR 1342 ***(refd)***
Rondel v. Worsley [1969] 1 AC 191 ***(refd)***
Rosli Dahlan v. IG Tan Sri Razarudin Husain & Ors [2025] 2 CLJ 115 HC ***(refd)***
Safri Koboy & Anor v. PP [1999] CLJU 75; [1999] 1 LNS 75 HC ***(refd)***
Sri Jayendra Saraswathy Swamigal, Tamil Nadu v. State Of Tamil Nadu & Ors [2006] 1 SRJ 533 ***(refd)***
Syed Ahmad Imdadz Said Abas v. Imej Muhibah Sdn Bhd; Majlis Peguam Malaysia (Intervener) [2021] 7 CLJ 125 HC ***(refd)***
Tan Weng Chiang v. PP [1992] 4 CLJ 2094; [1992] 1 CLJ (Rep) 324 SC ***(refd)***
Tenaga Nasional Bhd v. Evergrowth Aquaculture Sdn Bhd & Other Appeal [2021] 9 CLJ 179 FC ***(refd)***
Wong Pot Heng v. Zainal Abidin Putih & Anor [1990] 2 CLJ 174; [1990] 1 CLJ (Rep) 312 SC ***(refd)***
YB Teresa Kok Suh Sim v. Menteri Dalam Negeri, Malaysia & Ors [2016] CLJ 1819; [2016] 1 LNS 1819 CA ***(refd)***
Zainur Zakaria v. PP [2001] 3 CLJ 673 FC ***(refd)***

Legislation referred to:

Administration of Islamic Law (Federal Territories) Act 1993, ss. 34, 38, 40, 54(1), (2), 58(4)
Criminal Procedure Code, ss. 15(1), 107, 422
Emergency (Public Order and Prevention of Crime) Ordinance No. 5 1969, s. 3(1)
Evidence Act 1950, ss. 33, 57(1)(m), 73A, 114(g), 145(1), 146
Federal Constitution, arts. 3(1), 5(1), (2), (3), 145(3)
Government Proceedings Act 1956, s. 33(4)
Legal Profession (Practice and Etiquette) Rules 1978, rr. 16, 31
Legal Profession Act 1976, s. 42(1)
National Land Code, s. 22
Penal Code, s. 186
Public Authorities Protection Act 1948, s. 2(b)
Rules of Court 2012, O. 24 r. 7A, O. 34 r. 2(2)(e)(ii)
Syariah Criminal Offences (Federal Territories) Act 1997, ss. 2, 9, 28, 54, 57, 58, 60
Syariah Criminal Procedure (Federal Territories) Act 1997, ss. 2, 10(1), 54(1)

For the plaintiff - Saha Deva A Arunasalam, Kevin Ngu Heng Xu & Nik Elin Zurina Nik Abdul Rashid; M/s Saha Assocs

For the 1st-15th, 17th-22nd & 24th defendants - Nik Mohd Noor Nik Kar, Saifulakmal Mohd Said, Mohd Izhanuddin Alias; SFCs & Arina Azmin Ahmad Marzuki & Na'ilah Ilhani Shamsulbahri; FCs

Amicus curiae from the Malaysian Bar - Karen Cheah Yee Lynn, Anand Raj R Balasupramaniam & Abhilaash Subramaniam; M/s Abhilaash Subramaniam & Co

Reported by Lina E

JUDGMENT

Su Tiang Joo J:

Introduction

[1] The plaintiff, an advocate and solicitor, on behalf of her clients had put up a challenge at an event held on 3 April 2016 at the ballroom of the Renaissance Hotel, Kuala Lumpur (the said "event"), to enforce and protect their fundamental liberty housed under art. 5(1) of the Federal Constitution. As a consequence, she was detained and arrested.

[2] She claimed her challenge was made in the course of her discharging her duties as an advocate and solicitor. That her detention and subsequent arrest amounted to false imprisonment by the first to the 14th defendants, who are Religious Enforcement Officers ("REOs") of Jabatan Agama Islam Wilayah Persekutuan ("JAWI"). That the subsequent prosecution against her for obstructing a public officer under s. 186 of the Penal Code by the 20th defendant (the police investigating officer), the 22nd and 24th defendants (both deputy public prosecutors) from the Attorney General's Chambers amounted to malicious prosecution. As against D1 to D14, she claimed their acts further amounted to misfeasance in public office.

[3] For the torts of false imprisonment and misfeasance in public office, she claimed that the 15th defendant (the Chief Religious Enforcement Officer), 17th defendant (JAWI) and 18th defendant (Minister in the Prime Minister's Office responsible for the management of Islamic Affairs in the Federal Territories) should be vicariously liable for the torts committed by the first to 14th defendants.

[4] For the tort of malicious prosecution, she claims that the 21st defendant (the Attorney General) should be vicariously liable for the acts of the 22nd and 24th defendants.

[5] She also claimed that the 19th defendant (the Government of Malaysia) should be vicariously liable for all the torts committed against her by the first to 15th defendants, and the 20th, 21st, 22nd, and 24th defendants by reason of them being civil servants.

[6] After a full trial, judgment was pronounced in favour of the plaintiff on 18 July 2025, and these are the full grounds of judgment.

Parties

[7] The plaintiff is a Malaysian citizen and an advocate and solicitor of the High Court in Malaya.

[8] The following first to 15th defendants are REOs appointed by the Majlis Agama Islam Wilayah Persekutuan pursuant to s. 58(4) of the Administration of Islamic Law (Federal Territories) Act 1993 (Act 505) ("AILFT Act 505"):

(i) Akmal Nadzim bin Abdullah (D1);

(ii) Siti Nor Jihan binti Saleh @ Md Ghazali (D2);

(iii) Farah Wahida binti Zulkiflee (D3);

(iv) Ruzaimee bin Mamat (D4);

(v) Mohd Hasmizi bin Mohd Hassan (D5);

(vi) Mohd Shahrizan bin Yaacob (D6);

(vii) Mohd Khairuddin bin Mohd Noor (D7);

(viii) Rosyaimi Affendi bin Ruslan (D8);

(ix) Ahmad Naziz bin Lahori (D9);

(x) Mohammad Izehar bin Md Amin (D10);

(xi) Mohd Faizal bin Mustapha (D11);

(xii) Mohd Fikri bin Abu Mansor (D12);

(xiii) Mohd Faisal bin Roslan (D13);

(xiv) Mohamad Bukhori bin Ahmad (D14); and

(xv) Chief Religious Enforcement Officer, Federal Territory (D15).

[9] The 16th defendant (D16) is the Majlis Agama Islam Wilayah Persekutuan.

[10] The 17th defendant (D17) is the Jabatan Agama Islam Wilayah Persekutuan ("JAWI").

[11] The 18th defendant (D18), Datuk Seri Dr Mujahid bin Yusof, at the material time was the Minister in the Prime Minister's Office in charge of Islamic Affairs in the Federal Territories having control and supervision over the D17.

[12] The 19th defendant (D19) is the Government of Malaysia.

[13] The 20th defendant, Mohd Khairu bin Sulong (D20) was the police investigating officer in the criminal charge brought against the plaintiff pursuant to s. 186 of the Penal Code in the Kuala Lumpur Magistrates' Court (Criminal Jurisdiction) Criminal Case No. WA-83-3479-06-2017 (the said "s. 186 criminal charge").

[14] The 21st defendant (D21) is the Attorney-General of Malaysia;

[15] The 22nd defendant (D22), Siti Hajar binti Mohd Ashif, was one of the Deputy Public Prosecutors who undertook part of the prosecution against the plaintiff for the s. 186 criminal charge.

[16] The 23rd defendant (D23), Maizatul Munirah binti Abd Rahman, was one of the Deputy Public Prosecutors who undertook part of the prosecution against the plaintiff for the s. 186 criminal charge.

[17] The 24th defendant (D24), Nur Ashikin binti Mokhtar, was one of the Deputy Public Prosecutors who undertook part of the prosecution against the plaintiff in the s. 186 criminal charge.

[18] By consent, the suit against D16 and D23 was struck out without liberty to file afresh and with no order as to costs on 14 September 2023 and 30 November 2021 respectively. Thus, unless specifically mentioned, the defendants in these grounds of judgment shall refer to D1 to D15, D17 to D22 and D24.

Agreed Facts

[19] The following are the facts agreed between the plaintiff and the defendants:

(i) on 3 April 2016, D1 to D14 carried out a raid at the ballroom of the Renaissance Hotel, Kuala Lumpur. They reached this location at or about 10.30pm;

(ii) on 23 June 2017, the plaintiff was charged in the Kuala Lumpur Magistrates' Court pursuant to s. 186 of the Penal Code in connection with the event;

(iii) on 21 August 2020 the learned Magistrate acquitted and discharged the plaintiff at the end of the prosecution case in the Magistrates' Court criminal charge. It is further undisputed that the prosecution's appeal to the High Court has been struck out; and

(iv) D1 to D14 were appointed by D16 pursuant to s. 58(4) of the AILFT Act 505.

Trial

[20] The trial was conducted over 14 days.

[21] The plaintiff called the following four witnesses including herself:

(i) Siti Zabedah binti Kasim ('PW1');

(ii) Thilaga Socky Pillai a/p Sulathireh (PW2), a founding member of Justice for Sisters, a Non-Governmental Organisation ("NGO") focusing on the human rights of lesbian, gay, bisexual, transgender, intro-sex, and queer (LGBTIQ) community;

(iii) Hisham bin Hussein (PW3), a retired Chief Engineer of Tenaga Nasional Berhad and, Honorary Secretary of the Malaysian Aids Council (MAC) from 1992 to 2003 and, from 2012 until 17 October 2017. PW3 assisted in drawing up the Constitution for MAC together with the Ministry of Health and the setting up of the Malaysian Aids Foundation; and

(iv) Chew Chuan Yang (PW4), the Chief Executive Office of the ADP Publication Sdn Bhd or also known as the Anti-Death Penalty Asia Network (ADPAN). From 2015 to 2020, he was the Documentation and Monitoring Coordinator at Suara Inisiatif Sdn Bhd, also known as Suara Rakyat Malaysia ("SUARAM"). He is also the organising secretary of Liga Rakyat Demokratik ("LRD") and the head of the Human Rights Bureau of Malaysian United Democratic Alliance ("MUDA"). He provides paralegal support and assistance to civil society organisations and the monitoring of peaceful assemblies.

[22] The defendants produced four witnesses namely:

(i) D1, Akmal Nadzim bin Abdullah, Raiding Officer Jabatan Agama Islam Wilayah Persekutuan (JAWI) ('DWT');

(ii) D20, Inspector Mohd Khairu bin Sulong, Investigating Officer ('DW2');

(iii) D24, Nur Ashikin Mokhtar, Deputy Public Prosecutor ('DW3'); and

(iv) D2, Siti Nur Jihan binti Salleh, Raiding Officer JAWI ('DW4').

Evidential Ruling Made During The Course Of Trial

[23] During the trial, the learned Senior Federal Counsel ("SFC"), Tuan Nik Mohd Noor Nik Kar, took objections to learned counsel for the plaintiff making reference to the notes of proceedings ("NOP") of the Magistrates' Court for the s. 186 criminal charge (NOP encl. 142 pp. 636 to 641) when he was cross-examining DW1.

[24] The challenge mounted by the learned SFC was that pursuant to s. 33 of the Evidence Act 1950, the NOP of the witness who had given evidence in the Magistrates' Court, s. 186 criminal charge are irrelevant and cannot be admitted unless the witness is dead, cannot be found or is incapable of giving evidence or is kept out of the way of the adverse party. With DW1 being produced, the learned SFC asserted that those Magistrates' Court NOP cannot be relied upon. The learned SFC added that the NOP can only be relied upon if there is an application to impeach the witness.

[25] In response, learned counsel for the plaintiff pointed out that the Magistrates' Court NOP are agreed documents having been classified as Part B documents (CBOD 2 pp. 3 to 222). In other words, the authenticity of these documents has been agreed upon save as to contents, see O. 34 r. 2(2)(e)(ii) of the Rules of Court 2012 ("ROC"). Reliance was also placed on ss. 145 and 146 of the Evidence Act 1950.

[26] Upon the request of learned counsel for the plaintiff to further respond by way of written submissions which I acceded to, written submissions were filed by the defendants (encls. 120 and 127 with authorities in encls. 121 and 128) and the plaintiff (encls. 122 and 126 with authorities in encl. 123).

[27] Having considered the submissions, I accepted the submissions of the plaintiff and ruled that pursuant to the provisions of s. 145 of the Evidence Act 1950, the Magistrates' Court NOP are admissible and can be relied upon to cross-examine the defendants' witnesses to contradict them (encl. 142 NOP p. 655). Section 145 of the Evidence Act 1950 is reproduced below.

> (1) *A witness may be cross-examined as to previous statements made by him* in writing *or reduced into writing, and relevant to matters in question in the suit or proceeding* in which he is cross-examined, without the writing being shown to him or being proved; but if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.
>
> (2) If a witness, upon cross-examination as to a previous oral statement made by him relevant to matters in question in the suit or proceeding in which he is cross-examined and inconsistent with his present testimony, does not distinctly admit that he made such statement, proof may be given that he did in fact make it; but before proof can be given, the circumstances of the supposed statement, sufficient to designate the particular occasion, shall be mentioned to the witness, and he shall be asked whether or not he made such statement.
>
> (emphasis added)

The Plaintiff's Claim

Pleaded Case

[28] The plaintiff is an advocate and solicitor of the High Court in Malaya having been admitted to the Bar on 3 February 2005. She has a law practice under the name of Siti Kasim & Associates. She specialises in human rights matters and provides legal representation to the marginalised or the under-privileged and as such she does a lot of legal aid and *pro bono* work. She is a member of the Human Rights Committee and the Committee for the Orang Asli. She was also the Chairwoman of the Malaysian Bar's Committee for the Welfare of the Orang Asli from 2018 to 2022 (NOP encl. 141 p. 32).

[29] She claims she was subjected to wrongful arrest and/or unlawful detention and/or unlawful confinement by D1 to D15 giving rise to her following claims (A/SOC p. 40 para. 21 and NOP encl. 141 pp. 38 and 39):

(i) false imprisonment;

(ii) denial of her constitutional right to personal liberty under art. 5(1) of the Federal Constitution;

(iii) denial of her constitutional right to be informed as soon as may be of the grounds of her arrest under art. 5(3) of the Federal Constitution;

(iv) misfeasance in public office; and/or

(v) malicious prosecution.

False Imprisonment And Infringement Of Art. 5(1) And (2) Federal Constitution

[30] That on or about 3 April 2016, she was invited by PW2 to attend a fund raising dinner at the Renaissance Hotel, Kuala Lumpur at 8pm. She was to attend in her capacity as an advocate and solicitor to provide legal representation for the event because (NOP encl. 141 p. 39):

> ... many times, before whenever trans women have events or fundraising dinner or any kind of events, they have been frequently raided by the religious authorities. Hence, for that particular night they required a lawyer. It is to be on standby, just in case the religious authorities raid them that night and [it] did happen.

[31] The theme of the event was "Miss World" and it was a private event (NOP encl. 141 p. 40) attended by Muslims and non-Muslims.

[32] At about 10.30pm that night, she was seated at a table with PW3 at the back portion of the ballroom and noticed that a number of REOs wearing uniforms with the word "penguatkuasa" ('enforcement') had entered the ballroom (NOP encl. 141 p. 40).

[33] She then approached D1 and D2 who were positioned at the back of the ballroom. She noticed that some of the officers amongst D3 to D14 were standing guard at the various entrances to the ballroom having closed the door to all the exits of the ballroom.

[34] She made it known to D1 and D2 right from the outset that she was an advocate and solicitor and asked whether the event had contravened any law. D1 replied that there was nothing wrong in organising a dinner, but he said the event contravened a fatwa as there was a "Miss World" competition being held at the event. The plaintiff responded saying it is simply a mock show, a gimmick theme for the dinner and it was not an actual competition (NOP encl. 141 p. 42).

[35] D1 and D2 did not state which fatwa they were referring to despite her asking (NOP encl. 141 p. 41). They then walked to the front section of the ballroom. D1 shouted "duduk" ('sit') and "Kalau lari kena" ('if you run you will get it') and kept repeating the same in a threatening manner.

[36] D1 went onto the stage calling for the organiser to step forward and, in particular, one Ira Sofea. The latter, a trans woman, then approached D1 and D2. The plaintiff went along as Ira Sofea's advocate and solicitor.

[37] The plaintiff said that D1 to D14 did not allow her and the other attendees to leave the ballroom. They were asked to remain in the ballroom. Some attendees panicked and she had to tell them to calm down and not to be fearful as to her mind no offence had been committed.

[38] The plaintiff repeatedly asked D2 whether they had a warrant to enter the premises which was a private function or event making it clear that she was asking in her capacity as an advocate and solicitor. D2 refused to answer (NOP encl. 141 p. 41).

[39] Both D1 and D2 said it is a sizeable offence but did not specify what was the alleged conduct that amounted to a sizeable offence. Some of the officers then proceeded to seize 43 items of materials such as trophies and medals (NOP encl. 141 p. 42 and CBOD1 p. 3) on a table in the ballroom.

[40] The plaintiff was threatened by D1 that he could arrest her for obstructing his duties. She found this unreasonable. To her mind, all she was doing was to ask for clarification as an advocate and solicitor (NOP encl. 141 p. 42). The plaintiff then said she called the officer-in-charge of Police District, OCPD Tuan Munusamy (now deceased) who said he will contact the Dang Wangi Police Station, and about an hour later, the police arrived. The plaintiff called upon the police to do something.

[41] Thereafter, the attendees were allowed to leave the ballroom. However, the plaintiff asserted that D1 specifically instructed that both Ira Sofea and she cannot leave as both of them were under arrest. D1 allegedly refused to say under what offence she was being arrested despite her repeated demands (NOP encl. 141 p. 43). D1 and D2 then brought Ira Sofea out of the ballroom, and as they were leaving the ballroom D1 and D2 detained her. D2 held her hand and brought her to the stairwell outside the ballroom. When the plaintiff asked D2 to let go of her hand, D1 shouted "gari" (handcuff) numerous times. She then asked D1 whether she was being arrested, and D1 said, yes. When asked, why, D1 claimed that it was for obstructing a public servant from carrying out his functions under s. 186 of the Penal Code (NOP encl. 141 p. 44).

[42] Both the plaintiff and Ira Sofea were then brought by D1 to D14 in a van and driven to the Dang Wangi police station. D1 sat between Ira Sofea and the plaintiff in the van to the Dang Wangi Police Station. At the police station, both the plaintiff and Ira Sofea were placed under guard by D1 and a few JAWI officers whilst D2 went to the counter to lodge a police report (encl. 141 NOP p. 44) and in her police report (CBOD1 pp. 2 and 3) she said that operation carried out on 3 April 2016 was about a dinner and "Ratu

Cantik Mak Nyah" (trans women beauty contest). PW3 arrived shortly thereafter together with the plaintiff's lawyer. Upon questioning as to why she was brought to the police station, D1 refused to answer and after much questioning, D1 angrily shouted "Tidak!" (encl. 142 NOP p. 45). The plaintiff lodged a police report (CBOD2 pp. 1 to 2) and left at 2.30am, 4 April 2016.

[43] PW2's testimony corroborated the plaintiff's testimony. PW2 said that she is a human rights defender with 16 years of experience in human rights (NOP encl. 141 p. 307). She said that given the hostile environment against LGBTIQ people in Malaysia, the LGBTIQ groups and event organisers tend to take additional security and legal measures to ensure that they are not violating any laws and to create a safe environment for all (encl. 141 NOP p. 298).

[44] PW2 was made aware of a charity fund-raising dinner on 3 April 2012. Upon advice being sought by the organisers on security and legal matters, she offered to connect them with a lawyer (encl. 141 NOP p. 298). She then reached out to the plaintiff. Upon the plaintiff confirming that she was able to monitor and provide legal intervention for the event, PW2 connected the plaintiff with the organiser. Under cross-examination, PW2 clarified that by "legal intervention" the plaintiff was to act in her capacity and within her authority as a lawyer since she (PW2) was not a lawyer (encl. 141 pp. 318 and 319).

[45] When clarification was sought by this court, PW2 explained that the scope of monitoring expected of the plaintiff was (encl. 141 NOP p. 332):

> ...what we meant by engaging Puan Siti what we really, what I really asked her, requested her to do was one, monitor if there are human rights violations and also provide interventions if at all there are like raids or harassments *etc* and this also includes like asking for arrest warrant ...

Misfeasance In Public Office

[46] The plaintiff claimed that D1 to D14, but primarily D1 and D2, had unlawfully abused their powers and this results in the commission of the tort of misfeasance in office. Reliance was placed on *Government Of Malaysia v. Lim Kit Siang & Another Case* [1988] 1 CLJ 219; [1988] 1 CLJ (Rep) 63; [1988] 2 MLJ 12, where the Federal Court emphasised that public authorities must act fairly, reasonably, and in good faith, and an abuse of power done maliciously or in bad faith is actionable (encl. 173 para. 17).

[47] The plaintiff asserted that:

(i) the defendants acted either knowingly or recklessly without regard to the legality of their actions, and with the specific intention, or reckless indifference, and conducted themselves with such high-handedness

despite the plaintiff as an advocate and solicitor being present, was requesting for justification and clarification as to the legality of their actions and ultimately causing harm to the plaintiff;

(ii) that D1 and D2's misconduct is a gross violation of constitutional principles and public trust, and justifies the intervention of this Honourable Court; and

(iii) the unlawful detention of the plaintiff by D1 to D14 or any of them and her subsequent arrest by D1 and D2 was carried out with malice or was carried out with the knowledge or reckless indifference that such acts were unlawful, particulars of which and pleaded in para. 29 of the statement of claim (pp. 46 to 48) with some paraphrasing, are reproduced hereunder:

(a) D1 to D14 are public officers. They were exercising their public powers during the incident on 3 April 2016 up until the plaintiff was released on 4 April 2016;

(b) the false imprisonment of the plaintiff by D1 to D14 or any of them, or her subsequent arrest by the D1 and D2 was affected by malice or was carried out with the knowledge that such acts were unlawful;

(c) the plaintiff had informed D1 and D2 from the outset that there was no offence that warranted the officers to enter the ballroom. She had also informed them no offence had been committed under Act 559;

(d) D1 and D2 did not provide any justification or reasonable basis to support the raid. D1 and D2 were aware or must have been aware or should have been aware that they had no basis to conduct the raid as the plaintiff has explained that the "Ratu Cantik" (beauty queen) show was a "mock show" as was apparent to everyone invited to the function;

(e) D1 to D14, nevertheless, proceeded to confine the attendees of the event in the ballroom. This was done on the instructions of D1 and D2;

(f) there was no reasonable or probable cause to confine the attendees in the ballroom. D1 and D2 could not have honestly believed that they had any basis to confine the attendees in the ballroom. They could not provide any legal justification for the same when repeatedly asked by the plaintiff;

(g) the conduct of D1 and D2 during the incident showed that they were actuated by malice. D1 and D2 had conducted themselves in a high-handed and oppressive manner. D1 and D2 refused to provide any justification or reasonable basis to support the raid. D1 had expressed his intention to arrest the plaintiff even though she was carrying out her duties as an advocate and solicitor;

(h) on the plaintiff's wrongful arrest, D1 and D2 were aware or must have been aware or should have been aware that there was no legal or factual justification for the arrest. The plaintiff had informed D1 that D1 to D19 had no jurisdiction or power to investigate offences under the Penal Code. D1 and D2 had, nevertheless, continued with the wrongful arrest;

(i) D1 and D2 were fully aware that the plaintiff had in no way interfered with or obstructed D1 to D14 from carrying out their duties;

(j) D1 had even shouted "gari, gari" (handcuff) numerous times in a threatening and intimidating manner. D1 had the intent to harm the plaintiff; and

(k) D1 and D2 could not have honestly believed that there was any legal or factual justification for the plaintiff's arrest.

Malicious Prosecution

[48] The plaintiff asserted that D20, D21, D22 and D24 had maliciously prosecuted her by relying on events of the raid on 3 April 2016 without any regard whatsoever as to whether the powers exercised by them as public servants were indeed legally performed or discharged.

[49] It was pointed out by the plaintiff that there are three main elements to be proved under s. 186 of the Penal Code which provides that:

> Whoever voluntarily obstructs any public servant in the discharge of his public functions, shall be punished with imprisonment for a term which may extend to two years or with fine which may extend to ten thousand ringgit or with both.

[50] The three elements are:

(i) voluntarily obstructed a person;

(ii) the person obstructed was a public servant; and

(iii) the public servant was obstructed in the discharge of his public functions.

[51] The plaintiff asserted that the element that the public servant was lawfully carrying out his duties must be established prior to bringing any prosecution for such an offence. Reliance was placed on *PP v. Mohamad Sabu* [2012] 5 CLJ 246; [2012] 7 MLJ 547 paras. 20 and 28.

[52] In this case, D24, one of the Deputy Public Prosecutors who prosecuted the plaintiff for the s. 186 criminal charge, and who was produced as a witness (DW3), made a startling concession that she has no capacity to answer what are the ingredients required for an offence under s. 28 of Act

559, that of a male person posing as a woman (encl. 143 NOP pp. 803 and 853), and under s. 9 of Act 559 that of breach of a fatwa (encl. 143 NOP p. 855). A

[53] D24 who was produced as a witness (DW3) said she did not consider whether the raid was carried out in accordance with the Syariah laws (encl. 143 pp. 802 and 803). This court sought clarification from her when the prosecution was deliberating whether to prefer a charge against the plaintiff under s. 186 of the Penal Code, whether they would consider whether the public officers indeed had the power to carry out their functions. DW3 made another startling concession that she would not. The NOP to this effect is reproduced hereunder (encl. 144 NOP pp. 914 and 918): B C

MAH Sebentar ya, sebagai penjelasan. Jikalaulah penjawat awam itu menyalah guna kuasa untuk menjalankan apa yang dikatakan tugasan, adakah itu satu perkara yang seharus diambil kira juga? Misalnya, jikalau mereka menyalah guna kuasa untuk merompak ya, extreme example. D

SD3 Kalau, dengan izin Yang Arif. Kalau it's too obvious, yes akan diambil kira, tetapi untuk kes ini tidak ada elemen atau tidak ada unsur-unsur tersebut Yang Arif. Jadi, diambil kira pemeriksaan telah gagal dibuat oleh penjawat awam ini yang dalam tempoh masa tersebut menjalankan tugasnya telah gagal akibat dihalang oleh Tertuduh iaitu Plaintif Yang Arif. E

MAH Soalan saya ialah berjurus kepada jikalau seseorang penjawat itu sebenarnya tiada adanya kuasa untuk menjalankan tugasan itu. SD3 Yang Arif, saya percaya jika ia berlaku satu siasatan yang berbeza yang perlu diteruskan Yang Arif. Untuk s. 186, saya tidak mengambil kira perkara tersebut. F

[54] The plaintiff submitted that she could not verify whether the officers from JAWI were lawfully conducting the raid during the event. Thus, she had sought verification from D1 and D2, and thus, it cannot be said that she had voluntarily set out to obstruct them. G

[55] She initiated pre-trial discovery pursuant to O. 24 r. 7A of the Rules of Court 2012 ("ROC") against D19 to obtain the names, personnel number, position and rank of each of the enforcement officers who carried out the raid and similar particulars were sought on who were the arresting officers (CBOD1 pp. 17 to 41). An order for the discovery sought was made by the Kuala Lumpur High Court by Faizah binti Jamaludin JC (now JCA) on 13 June 2017. And, on the very same day, later in the afternoon, the plaintiff received a call from a police officer that she will be charged under s. 186 of the Penal Code in relation to the event. This is 14 months after the event, when no action had been taken earlier save for her statement having been recorded on 7 April 2016. This is evidence of malice. H I

[56] On 23 June 2016, the plaintiff was charged for the s. 186 criminal charge. This, the plaintiff asserted was an abuse of process. D2 was the complainant, whereas, D20 was the investigating officer and who recommended the initiation of the s. 186 criminal charge. D22 and D24 conducted the prosecution. The plaintiff pleaded not guilty. On the same day, to secure her release on bail, the plaintiff posted a bond of RM3,000 to attend court to face the s. 186 criminal charge.

[57] On 21 August 2020, the learned Magistrate, Tawfiq bin Affandy Chin, discharged and acquitted the plaintiff at the close of the prosecution case. The learned Magistrate, found, *inter alia,* that:

(i) first, the charge was defective for failing to set out specifically what obstruction was said to have been done by the plaintiff against D2 with no efforts made by the prosecution to amend the charge under s. 422 of the Criminal Procedure Code Act 593 ("CPC");

(ii) second, the prosecution's own witnesses testified that the plaintiff had cooperated at all material times;

(iii) third, the plaintiff was merely carrying out her duty as a lawyer; and

(iv) fourth, JAWI did not conduct the raid properly.

[58] In my considered view, upon a close reading of the grounds of judgment of the learned Magistrate (CBOD2 pp. 3 to 17), learned counsel for the plaintiff has not set out the reasons for the learned Magistrate accurately. I will deal with this in my analysis and findings in the later part of this judgment.

[59] The plaintiff asserts that D20, D22 and D24 could not have honestly believed that there was any basis for the s. 186 criminal charge to be preferred. From the cross-examination of D20, the police investigating officer and who was produced as DW2, the following submissions were made:

(i) he did not obtain any independent statement or evidence from the staff of the hotel or any person other than the JAWI officers and the enforcement officers during his investigations;

(ii) he agreed that the plaintiff had acted on that night in her capacity as a lawyer for the organisers, Ira Sofea;

(iii) he agreed that from his investigation no women were involved in the "Ratu Cantik" and the participants were all men described as "Mak Nyah" and "lelaki berpakaian wanita";

(iv) in fact, (encl. 142 NOP p. 671) in his evidence in chief, DW2 said that he had also investigated the police report lodged by the plaintiff (Dang Wangi Report 8825/2016) where the plaintiff confirmed that the

"Ratu Cantik" contest was simply an "olok-olok" (mock show). Crucially, DW2 gave evidence that statements compiled from his investigation confirmed that it was a mock show;

(v) DW2 agreed that the only thing the plaintiff did was to question the raiding officers about their warrant and the provisions of law they were acting upon and what offence was being committed;

(vi) he agreed that the plaintiff did not touch or push any officer and was merely questioning the officers at the dinner in a loud voice;

(vii) that he had proceeded with the charge against the plaintiff under s. 186 of the Penal Code simply because he received the orders from his superior (Ketua Bahagian Siasatan Jenayah); and

(viii) he admitted that in his personal view there was no offence but he was compelled to charge due to instructions from his superior and the Attorney General's Chambers (AGC).

[60] The plaintiff asserted that the learned DPPs (D21, D22 and D24) had led evidence with a false narrative given by D1 and D2 without regard to the truthfulness of their evidence. That they were completely not interested with the fact that the plaintiff was at all times acting as a lawyer, that there was no physical obstruction of any officers and there was no unacceptable language used save for the plaintiff questioning the legal basis for the raid. Despite the learned Magistrate dismissing the case at the end of the prosecution stage, they immediately pursued an appeal which was later struck out.

[61] The plaintiff submitted that upon a perusal of ss. 57, 58 and 60 of Act 559 (*sic* – should be Syariah CPA (Act 560)), the powers of investigation conferred on the REOs to investigate the event has to be from information received and recorded in Form 5, and from the evidence led, the defendants have failed to prove or justify the source of power as the Form 5 produced during trial was not specific to the event. Neither did the defendants prove that the fatwa alleged to have been violated was indeed applicable as asserted by D1 to D14. And, thus, for the prosecution to persist in proceeding with the prosecution of the s. 186 criminal charge was malicious. More so, when the prosecution and the defendants in this action have failed to tender any proof to show that such a fatwa extends to a mock beauty contest with the participants being men dressed as women ("Ratu Cantik Mak Nyah").

Defendants' Position

False Imprisonment And Infringement Of Art. 5(1) And (3) Of The Federal Constitution

[62] The defendants asserted that D1 to D15 have the powers to investigate offences under s. 58(4) of the AILFT (Act 505) but the powers and standard of operating procedure on the day of the incident on 3 April 2016 were under the control and jurisdiction of D17 and D18 (p. 55 para. 3).

[63] D20 had carried out his duties in accordance with s. 107 of the CPC. D22 and D24 had carried out the prosecution premised upon the power delegated to them by D21. All of them carried out their duties in good faith (A pp. 55 to 58).

[64] On 20 March 2016, the counter of the enforcement section of JAWI received information that on 3 April 2016, there will be a beauty pageant event involving men dressing like women (encl. 158 p. 5 para. 12) commencing 7.30pm. The defendants in their submissions (encl. 158 para. 33) asserted that the fatwa prohibits Muslim men from joining the event.

[65] After a briefing session regarding the "offence provision, standard operating procedure", all the officers involved were divided into groups to carry out specific tasks (encl. 158 p. 5 para. 15).

[66] At around 10.30pm, the JAWI enforcement officers entered the ballroom and headed towards the stage. The attendees moved to the exit door at the rear of the stage. The situation became chaotic as they were crowding to get out. A mirror was smashed behind the stage which the defendants claimed to be an act of provocation. (A pp. 59 to 61 and encl. 158 paras. 16 to 18).

[67] The situation was made more difficult with the plaintiff continuously challenging the enforcement officers' authority especially that of D1 and D2 to carry out the inspection and that she had obstructed them from carrying out their tasks. That the plaintiff had continuously provoked and used abusive words and levied threats against D1 (A p. 61 paras. (n) and (o) and encl. 158 para. 20).

[68] Pursuant to the said inspection, the JAWI enforcement officers seized 43 items, prepared a seizure list and requested one Asparman bin Abdul Kadir or known as Ira Sofea to sign the same but who was prevented from doing so by the plaintiff (A pp. 61 and 62 paras. (p) and (q) encl. 158 para. 21). The defendants have spelt Ira's name as Ira Sophea in their pleadings but as Ira Sophia in their submissions whereas the plaintiff has spelt his name as Ira Sofea. In these grounds, I will refer to him as Ira Sofea.

[69] D1 informed Ira Sofea that he was being detained pursuant to s. 9 of Act 559 for insulting or disobeying religious authorities by organising a "pertandingan ratu cantik" (beauty pageant) (A p. 62 para. (q) and encl. 158 para. 22) pursuant to s. 9 of Act 559.

[70] However, the plaintiff continued to challenge JAWI's REOs and had disallowed Ira Sofea to be arrested. That both the plaintiff and Ira Sofea refused to cooperate and did not provide their national identity cards to facilitate investigations (A p. 62 para. (r) and encl. 158. para. 23). That at about 11.40pm, the plaintiff and Ira Sofea were brought to the Dang Wangi Police Station for further investigation. They were not handcuffed.

[71] DW1 in his testimony said that the plaintiff was not detained or arrested in the ballroom and, if the plaintiff had wanted to leave the ballroom, it would have been "dialu-alukan" (welcomed) (encl. 142 NOP p. 592).

[72] D2 lodged a police report (CBOD 1 pp. 2 to 4), and the matter was settled at 2.30am with the plaintiff leaving the police station (encl. 158 para. 25). Pursuant to this police report, investigations were carried out by D20 and the plaintiff arrested on 7 April 2016. Upon his submission of the investigation papers to the DPP, instructions were given for the plaintiff to be charged under s. 186 of the Penal Code.

[73] That whether to charge or not is a discretion conferred upon D21 pursuant to art. 145(3) of the Federal Constitution.

[74] Notwithstanding the dismissal of the s. 186 criminal charge on 21 August 2020 with the plaintiff acquitted and discharged, the prosecution had filed a notice of appeal on the same day. The appeal was struck out on 12 July 2021 as service of the notice of appeal was not effected at the address of the plaintiff as notified to the court. The prosecution has filed its petition of appeal and intends to continue with their appeal (A p. 65).

[75] The defendants carried out the raid to take action against anyone who has committed an offence pursuant to s. 9 of Act 559, and the acts of seizure of items and detention of Ira Sofea and bringing him to the IPD Dang Wangi were all done within the jurisdiction of the REOs pursuant to Syariah CPA Act 560 which would be proved at trial (A p. 66 paras. a to d)

[76] That the plaintiff was aggressive, obstructive and provocative and prevented the REOs from carrying out their tasks at the event and who did not know of the relationship between the plaintiff and Ira Sofea, including whether the plaintiff was an advocate and solicitor (A p. 67 paras. e and f).

[77] The defendants denied that the plaintiff was subjected to false imprisonment or that her Constitutional rights have been infringed. Instead, the raid was to detain people who have contravened s. 9 of Act 559, *ie*, Ira Sofea as the organiser of the beauty queen contest. There was no intention to detain or prevent the plaintiff from leaving the ballroom. Instead, the plaintiff had obstructed the REOs from continuing with their tasks and in the process hurled insults and curses at them. A police report was lodged against the plaintiff for such obstruction (A pp. 67 and 68 paras. g and h)

[78] The defendants denied that the plaintiff had suffered loss of liberty of approximately four hours or that she had suffered nervous shock, suffering, humiliation and mental anguish as claimed (A p. 69 para. 11).

[79] The defendants assert that the prosecution against the plaintiff was based upon its investigation that the plaintiff had obstructed public officers in the discharge of their functions in the enforcement of s. 9 of Act 559, that

her being discharged and acquitted does not amount to malicious prosecution and there was reasonable and probable cause for the prosecution, there being no *mala fide*, abuse of power or cheating on the part of D20 in his investigations and recommendation that the plaintiff be charged, and similarly for D21 and D22 and D24 (A paras. 12.1. to 12.6). The defendants prayed for the plaintiffs claim to be dismissed with costs to be borne on a solicitor client basis pursuant to s. 2(b) of the Public Authorities Protection Act 1948 (Revised 1978) (Act 198).

Issues To Be Tried (Encl. 76)

[80] The following are the agreed issues to be tried.

[81] If the plaintiff was arrested and/ or detained whether:

(i) D1 and/or D2 have any lawful grounds to detain and/or arrest her pursuant to s. 186 of the Penal Code and/or any other offences.

[82] Further to the above:

(i) whether the plaintiff was carrying out her job as an advocate and solicitor when she was arrested;

(ii) whether the plaintiff was arrested and/or detained without basis and/or wrongfully as from at or about 10.30pm on 3 April 2016 until on or about 2.30am on 4 April 2016;

(iii) whether the plaintiff's right guaranteed under art. 5(1) of the Federal Constitution had been infringed by the defendants;

(iv) whether D1 to D14 have committed the tort of misfeasance in public office in confining and/or detaining and/or arresting the plaintiff;

(v) whether D20, D21, D22 and D24, severally or jointly had committed malicious prosecution against the plaintiff in Kuala Lumpur Magistrates' Court Criminal Case No. WA-83-3479-06-2017; and

(vi) whether D15, D17 to D19 are vicariously liable for being the party appointing the defendants.

[83] If any or all of the matters in para. 82 is answered in the affirmative, whether:

(i) the plaintiff is entitled to any or all damages and losses and reliefs as pleaded in the statement of claim.

[84] As the action against D16 has been struck out, those issues set out in paras. 2 a) to g) and 3 in the agreed issues to be tried (encl. 76) are no longer relevant.

[85] Whether the plaintiff has suffered the damages and losses as claimed in paras. 30.1 and 30.2 of her statement of claim.

Court's Analysis And Findings

[86] In analysing the issues that the parties have agreed to be tried, in my considered view, these issues can be determined by considering the following issues:

(i) legality of the attendance of D1 to D14 at the event and the applicability of a fatwa relied upon by D1 to D14 in initiating the raid at the event (see the plaintiff's submissions in encl. 173 paras. 20, 20.1 to 20.4, 21, 21.1 to 21.12);

(ii) whether the plaintiff was arrested and subjected to false imprisonment. This issue will include the role of that of an advocate and solicitor in the circumstances;

(iii) whether there was misfeasance in public office on the part of D1 to D14;

(iv) whether D20, D21, D22 and D24, had jointly or severally committed the tort of malicious prosecution against the plaintiff in Kuala Lumpur Magistrates' Court Criminal Case No. WA-83-3479-06-2017; and

(v) whether vicarious liability ought to be found against D15, D17 to D19.

Legality Of The Attendance Of D1 To D14 At The Event (See The Plaintiff's Submissions) In Paras. 20, 20.1 To 20.12) And The Applicability Of A Fatwa Relied Upon By D1 To D14 In Initiating The Raid At The Event

[87] It would be helpful to first lay out what is the definition of a fatwa.

[88] The interpretation section of the Syariah Criminal Offence (Federal Territories) Act 1997 (Act 559) ("Act 559") housed in s. 2 thereof, provides that:

> "fatwa" means any fatwa made under section 34 of the Administration Act;
>
> "Administration Act' means the Administration of Islamic Law (Federal Territories) Act 1993 (Act 505);
>
> "Mufti" means the person appointed to be the Mufti for the Federal Territories under section 32 of the Administration Act, and includes the Deputy Mufti.

[89] And, s. 34 of the AILFT (Act 505) provides that:

> Fatwa
>
> (1) The Mufti shall, on the direction of the Yang di-Pertuan Agong, and may, on his own initiative or on the request of any person made by letter addressed to the Mufti, make and publish in the *Gazette*, a fatwa or ruling on any unsettled or controversial question of or relating to Islamic Law.
>
> (2) No statement made by the Mufti shall be taken to be a fatwa unless and until it is published in the *Gazette* pursuant to subsection (1).

(3) Upon publication in the *Gazette*, a fatwa shall be binding on every Muslim resident in the Federal Territories as a dictate of his religion it shall be his religious duty to abide by and uphold the fatwa, unless he is permitted by Islamic Law to depart from the fatwa in matters of personal observance, belief, or opinion.

(4) A fatwa shall be recognized by all Courts in the Federal Territories as authoritative of all matters laid down therein.

[90] In both Act 559 and AILFT Act 505, "court" means the Syariah Subordinate Court, the Syariah High Court, or the Syariah Appeal Court, as the case may be constituted under s. 40 of the AILFT Act 505.

[91] On the procedure for the initiation of an investigation, Part IV of the Syariah CPA (Act 560) sets out the provisions on "Information To The Religious Enforcement Officers And Their Powers To Investigate" and s. 54 of the Syariah CPA (Act 560) provides as follows:

Section 54. Information

(1) *Every information relating to the commission of an offence,* if given orally to a Religious Enforcement Officer, *shall be reduced into writing by him or under his direction and be read over to the informant.*

(2) Every such information shall be entered in *Form 5 of the Second Schedule* to be kept by such officer, *who shall append to such entry the date and hour on which such information was given, and whether given in writing or reduced into writing as provided in subsection (1) shall be signed by the person giving it.*

(emphasis added)

[92] And, Form 5 of the Second Schedule which form one of the main gangplanks of the plaintiff's action, provides as follows:

Form 5
Syariah Criminal Procedure
(Federal Territories) Act 1997
[Subsection 54(2)]
Information To Religious
Enforcement Officer

No.: .....

Date: ..... Time: ..... a.m./p.m.

Name: .....

Identity Card No.: ..... Age: .....

Occupation: .....

Address: .....

I hereby give the following information:

.....

...

Signature of Informant

The above information is given in writing/orally and was written and signed by the officer below and read over to the informant.

...

Signature of Religious Enforcement Officer

Dated this ..... day of ..... 20 .....

[93] In my considered view, the initiation of the raid by D17 through its REOs (D1 to D14) was fundamentally flawed for failure to comply with the required procedure prescribed by s. 54(1) and (2) of the AILFT Act 505, and in particular, the statutory requirements of Form 5 as prescribed by the Second Schedule to the Syariah CPA (Act 560).

[94] This calls for a perusal of the impugned Form 5 (CBOD1 p. 1) dated 2 March 2016 relied upon by D1 to D15 to initiate the raid, and which is reproduced hereunder.

P7

BORANG 5

AKTA TATACARA JENAYAH SYARIAH (WILAYAH-WILAYAH PERSEKUTUAN) 1997

(Subseksyen 54 (2))

MAKLUMAT KEPADA PEGAWAI PENGUATKUASA AGAMA

No:

Tarikh: 02-03-2016 Masa: 09:40

Nama: AZROLFERIN BIN ZAHURI

Kad Pengenalan No: 850810105567 Umur: 30 TAHUN, 9 BULAN, 3 HARI

Pekerjaan: PPA JAWI

Alamat: BAHAGIAN PENGUATKUASAAN JABATAN AGAMA ISLAM WILAYAH PERSEKUTUAN KUALA LUMPUR.

No Tel (R) : No Tel (P) : 1805881771 No Tel (HP) :

Saya dengan ini memberikan maklumat yang berikut:

TELAH MENERIMA ADUAN DARIPADA ORANG AWAM BERKENAAN SATU MAJLIS (PERTANDINGAN) BAGI KESALAHAN DIBAWAH SEKSYEN 28 AKTA 559 IAITU LELAKI BERLAGAK SEPERTI WANITA YANG AKAN DIADAKAN PADA 03/03/2016 DI SENTUL KUALA LUMPUR.

MOHON SIASATAN DAN TINDAKAN DARIPADA PIHAK BPK JAWI/SEKIAN.

Tandatangan Pemberi Maklumat

Maklumat-di-atas diberikan secara berkulitoon dan telah ditulis dan ditandatangani oleh pegawai di bawah ini dan dibacakan kepada pemberi maklumat.

Tandatangan

Bertarikh pada 03 hariban 03 tahun 16

[95] A scrutiny of the impugned Form 5 shows that the prescribed statutory requirements of setting out the name, identity card particulars, age, occupation and address of the informant were not set out. The statutorily required signature of the informant was not affixed onto the Form 5.

[96] Instead, what were set out were the occupation and address of a REO, Assolehin bin Zainuri who received the information. That he was the REO who received the information came to light from the testimony of DW4 (D2) (encl. 145 NOP pp. 1493 to 1495).

[97] DW4 said that the informant who gave the information did not wish to give his personal particulars (encl. 145 NOP p. 1497). This piece of evidence is clearly hearsay and inadmissible, as the person said to have received the information, *ie*, Assolehin bin Zainuri was not produced to testify and neither was his absence excused for purposes of leading secondary evidence as is permitted under s. 73A of the Evidence Act 1950.

[98] What is said to be the information given is vague and nebulous as to when and where the alleged offence would take place on 3 April 2016. And, the information contained therein made mention of a s. 28 of Act 559 offence which is a non-sizeable offence, and as correctly held by the learned Magistrate in the s. 186 criminal charge, it is an offence which would require a search or arrest warrant to disrupt the private event. DW4's testimony that there were further information arising from investigations thereafter, did not assist the defendants, because, firstly such information was not reduced into writing as is required under s. 54(1) of the Syariah CPA (Act 560), and secondly, the information was to do with a beauty contest of "Mak Nyah" and not a beauty queen contest (encl. 145 NOP pp. 1579 to 1581).

[99] With respect, D1/DW1's belligerent testimony during his cross-examination disagreeing that the impugned Form 5 must have the informant's signature and his refusal to answer when it was put to him that the impugned Form 5 was not in accord with the statutory requirements made him to be not a credible witness (encl. 144 NOP p. 1068). When asked whether he would normally carry out enforcement premised upon a report made in Form 5, he even disagreed. He said that their standard operating procedure provides that upon any information having been received *via* the telephone, the recipient will be the informant for purposes of filling up the Form 5 (encl. 144 NOP p. 1069). However, such SOP cannot override the statutory requirements, and in any event, such a SOP was not produced. Thus, I agree with the submissions that the failure to produce the same, attracts the adverse presumption under s. 114(g) of the Evidence Act 1950, that if produced, it would be adverse to the defendants.

[100] I agree with the submissions of the plaintiff, that the burden of proof lay on the defendants to prove that the raid was in accordance with the statutory requirements, and this they have failed to do. After all, they proceeded to carry out a raid on the strength of powers said to be given to

them. Surely, it is for them to first satisfy themselves and be able to prove that they have complied with the necessary statutory requirements before exercising the powers entrusted upon them. In this regard, the reliance by the defendants on the authorities cited (encl. 158 paras. 42 to 45) supporting the test of "reasonable suspicion" for a s. 186 of the Penal Code offence that accompanies the power of arrest given to the police are misconceived as the defendants have not passed the first hurdle of justifying their presence at the event and subsequent detention of the attendees.

[101] Both D1 and D2 had initially ignored the plaintiff's request for information as to why they are there, and more importantly, under what specific provisions of the law are they there to disrupt the event beyond an assertion of the enforcement of a breach of a fatwa. Only after repeated requests, and with the event now in chaos with participants of the mock beauty pageant seen running helter skelter to exit with a large number seen running to the rear of the stage only to find they could not exit, did D1 and D2 assert that the event was in contravention of a fatwa on the holding of a beauty queen pageant, a "pertandingan ratu cantik".

[102] An issue of much controversy was whether the raiding team comprising D1 to D14 under the supervision of D1 and D2 had restricted the exit of the guests and in particular the participants of the mock show within the confines of the ballroom of the venue. The testimonies of the plaintiff and that of PW3 (encl. 143 NOP p. 392) that "all the doors were closed actually and dia apa ini ada officers from JAW, I were all standing at the doors. So, nobody can leave the ballroom actually so whether we want to construe I construed that and look at that as semua ditahanlah at that point in time itself because nobody is allowed to leave the ballroom".

[103] The testimony of DW1 upon which the learned Senior Federal Counsel placed heavy reliance asserted otherwise. DW1's testimony during the trial of this action that they did not block the access doors to the ballroom when they proceeded to disrupt the event is directly contradictory with his testimony during the s. 186 criminal charge that he had placed all the REOs save for D2, Puan Farah Wahida and two photographers to guard the doors (CBOD2 pp. 155 and 156) and that no one is allowed to leave until after the inspection. He said (CBOD3 p. 136) during the s. 186 criminal charge that:

> Saya masih ingat tertuduh mempersoalkan apa kuasa PBA untuk menahan orang ramai daripada keluardewan yang mana saya jelaskan selagi pemeriksaan belum selesai, mereka TAK BOLEH KELUAR daripada dewan kerana jika mereka keluar pemeriksaan tidak dapat dijalankan.

[104] DW1 should not be allowed to approbate and reprobate in different forums. His contradictory statements make him an unreliable witness. I observed that on many an occasion he will continue to give his statements and explanations even though the answer is for only a yes or no answer and despite having been told not to. He proved to be an uncooperative witness.

[105] In their submissions in reply (encl. 177 paras. 9 to 15), the defendants sought to valiantly save the credibility of DW1's testimony with reliance placed on the principle that the evidence of a witness need not be rejected *in toto* simply because it is unreliable or untrue in some parts (*Khoon Chye Hin v. PP* [1961] CLJU 41; [1961] 1 LNS 41, *Adiswaran Tharumaputrintar v. PP & Other Appeals* [2014] 3 CLJ 813 and *Alwie Handoyo v. Tjong Very Sumito & Another Appeal* [2013] SGCA 44) and that the evidence of DW1 was never impeached or challenged by the plaintiff.

[106] With due respect, the evidence of DW1 was categorically challenged. I have ruled that pursuant to s. 145(1) of the Evidence Act 1950, the evidence given by DW1 which were reduced into writing in the form of notes of evidence of the Magistrates' Court obtained from the s. 186 criminal charge were admissible to contradict DW1. For the defendants to make light of such a serious contradiction when such evidence given by DW1 against the plaintiff in the Magistrates' Court was to secure a criminal conviction which carries a sentence of imprisonment which may extend to two years or with fine which may extend to RM10,000 or with both, is without merit and is in fact, scandalous.

[107] In addressing the defendants' further submission that even if the evidence of a witness is impeached, the whole of his evidence is not to be excluded in totality (encl. 177 para. 15) with reliance placed on *Hj Elias Hanan v. Hj Md Noor Salleh* [2002] 8 CLJ 448; *Safri Koboy & Anor v. PP* [1999] CLJU 75; [1999] 1 LNS 75; [1999] AMEJ 0278, I maintain my view expressed in *PP v. Rezeka Ravi* [2023] CLJU 1624; [2023] 1 LNS 1624; [2023] AMEJ 1662, paras. [48] and [49] which is reproduced hereunder:

> [48] The prosecution added that if SP8 is impeached, they took an alternative position similar to that of the defence, that it does not mean that "the whole of his evidence must in law be rejected", especially when weighed together with the evidence of SP5, SP6, SP7, SP9 and SP14. (encl. 227 para. 9) with reliance placed upon several authorities, see the Federal court case of *Dato' Seri Anwar Ibrahim v. PP & Another Appeal* [2004] 3 CLJ 737; *Khoon Chye Hin v. PP* [1961] CLJU 41; [1961] 1 LNS 41 (CA), and *PP v. Mohd Ali bin Abang* [1994] CLJU 189; [1994] 1 LNS 189; [1994] 2 MLJ 12 (HC) and the Federal court case of *Dato' Seri Anwar Ibrahim v. PP & Another Appeal* [2004] 3 CLJ 737.
>
> [49] *However, I agree with the analysis of the above cases made by Justice Ahmad Shahrir Mohd Salleh J in PP v. Muhammad Azib Azhari [2021] CLJU 2284; [2021] 1 LNS 2284 (HC) at paragraphs [38] and [39] with reliance placed upon the Court of Appeal authority of Zaliman Zakaria v. PP [2020] CLJU 1259; [2020] 1 LNS 1259; [2020] MLJU 409; [2020] MLRAU 271 which held that when the credit of a witness has been impeached based on a material contradiction which is left unexplained, the whole of his evidence will be disregarded.*

(emphasis added)

[108] The defendants' reliance on the impugned Form 5 (CBOD1 p. 1) and the further alleged information which were not reduced into writing as is statutorily required, taints the raid of the private event on the 3 April 2016 with illegality and drove me to hold that it was unlawful.

[109] As for the alleged breach of the fatwa, I agree that the fatwa gazetted under P.U.(B) 51 on 8 February 1996 pursuant to s. 34 of the AILFT (Act 505) strikes as "pertandingan ratu cantik" which is that of a beauty queen contest.

[110] In my considered view, upon a plain reading of this statutory provision, it is an offence to participate, host or contribute in any manner of contribution towards the hosting of any beauty queen contest. The word, "queen" connotes a woman and this provision strikes at any beauty competition participated, hosted or contributed by any females. Throughout the trial and during closing submissions, the defendants have not produced any authority to say otherwise. See *Kijal Resort Sdn Bhd v. Pentadbir Tanah Kemaman & Anor* [2015] 3 CLJ 861; [2015] 2 AMR 89 where the Federal Court said:

> [71] It is a settled rule of statutory interpretation that if the precise words used are plain and unambiguous, the court is bound to construe them in their ordinary sense. This has been stressed in *Bindra's Interpretation of Statutes* (7th edn.) at p. 491 in the following passage:
>
> > Where the language of an Act is clear and explicit, we must give effect to it, whatever may be the consequences, for in that case the words of the statute speak of the intention of the legislature. If any statutory provision is capable of only one construction then it would not be open to the court to put a different construction upon the said provision merely because the alternative construction would lead to unreasonable or even absurd consequence. The question of consequences and considerations of policy would be relevant only where the provisions sought to be construed is capable of two constructions. In such a case the court is not concerned with the results which may ensue from giving to the plain meaning of the words used by the legislature. If these results are unfortunate, it is for the legislature to take action to remedy the defects of the law as enacted; it is not for the courts to usurp the functions of the legislature and by straining the meaning, and ignoring the clear terms of the law to seek to evade consequences which, in the opinion of the court, may prove ill-fraught.
>
> [72] In *Abel v. Lee* [1871] LR 6 CP 365, Willes J said: "I utterly repudiate the motion that it is competent to a judge to modify the language of an Act of Parliament in order to bring it accordance with his views so as to what is right and reasonable".
>
> [73] The above authorities were adopted by the Federal Court in the case

of *Ex P Guan Teik Sdn Bhd (Substituting Lim Oo Guan, Deceased)* [2010] 4 CLJ 289; [2010] 1 MLJ 1.

[111] I adopt the recitation of the trite principle referred to in *Easy Vista Sdn Bhd v. Tenaga Nasional Bhd* [2021] 1 CLJ 453; [2020] AMEJ 1101 para. [76], that the court must resort to the ordinary and natural meaning of the words in a statute and the courts cannot fill in any gaps – see (i) *Tan Weng Chiang v. PP* [1992] 4 CLJ 2094; [1992] 1 CLJ (Rep) 324; [1992] 2 MLJ 625; [1992] 1 AMR 333; [1992] 1 MLRA 332, (ii) *Wong Pot Heng v. Zainal Abidin Putih & Anor* [1990] 2 CLJ 174; [1990] 1 CLJ (Rep) 312, (iii) *Chong Thain Vun v. Watson & Anor And Other Cases* [1967] CLJU 29; [1967] 1 LNS 29; [1968] 1 MLJ 65 and (iv) *Government Of Malaysia v. Mohamed Amin Hassan* [1985] CLJU 79; [1985] 1 LNS 79; [1986] 1 MLJ 224.

[112] And, in *PP v. Tan Tatt Eek & Other Appeals* [2005] 1 CLJ 713; [2005] 2 AMR 353, it was held by the Federal Court speaking through Steve Shim CJ (Sabah & Sarawak) that: "The primary duty of the court is to give effect to the intention of the legislature in the words used by it. It is a well-established canon of interpretation that the intent of the legislature is to be gathered from the words used and that if the words used have not acquired any technical meaning, they should be deemed to have been used in their ordinary meaning. If the words of the statute are in themselves precise and unambiguous, then no more is necessary than to expound those words in their natural and ordinary sense. The words themselves alone in such cases best declare the intent of the law giver".

[113] When clarification was sought by this court as to whether a beauty queen contest includes one where the participants are men, DW1 (D1) expressed his view, that so long as the participants wear a gown, a sash (selempang) or a scarf (selendang), and a crown (mahkota), it is a beauty queen contest (encl. 144. NOP 1251). He said he came to such a simplistic view of what "pertandingan ratu cantik" is by doing a search using Google (encl. 144 NOP pp. 1253 and 1254) between the date of receipt of information on 2 March 2016 of the proposed event and the raid on 3 April 2016 (encl. 144 NOP p. 1262).

[114] This prompted the learned SFC, Nik Mohd Noor Nik Kar, to draw this court's attention to the provisions of s. 38 of the AILFT (Act 505) and suggested that this court could get an opinion, if required, from the Mufti (encl. 144 NOP pp. 1257 to 1260). Section 38 of the AILFT (Act 505) provides as follows:

> Request for opinion from the Mufti
>
> Notwithstanding any written law to the contrary, the Mufti shall not be liable to be summoned to any civil court or Syariah Court to give opinion or evidence relating to Islamic Law, but if in any court other than a

Syariah Court any question of Islamic Law calls for a decision, that court may request the opinion of the Mufti on the question, and the Mufti may certify his opinion to the requesting court.

[115] I did not accede to such a suggestion. In my considered view, it was grossly too late for the defendants to hope to try to justify their action only during the trial of this action on 22 January 2024 during the cross-examination of DW1 when the defendants have embarked on a course of action by carrying out the raid on 3 April 2016 and subjecting the plaintiff to be arrested on 3 April 2016, and had her prosecuted for the s. 186 criminal charge for the period from 13 June 2017, the date the plaintiff received a call saying she would be charged, and in fact was charged on 23 June 2017, until she was acquitted and discharged on 21 August 2020, and with the threat of further prosecuting an appeal which had been struck out hanging over her head.

[116] The following events show that at the very least, the defendants were recklessly indifferent as to whether they were lawfully entitled to use the awesome power at their disposal to disrupt the event:

(i) from the information supplied to D2 and recorded in the impugned Form 5 (CBOD 1 p. 1 exh. P7) dated 2 March 2016, it would thus be known to D1 to D15 that the event would be a contest involving men acting as women. This was, of course, before their raid of the event on 3 April 2016;

(ii) D2 in her police report dated 4 April 2016 (CBOD1 pp. 2 to 4) again made it clear that she and her team raided the event knowing it was a "Ratu Cantik Mak Nyah";

(iii) as found by the learned Magistrate, Tawfiq bin Affandy Chin in the s. 186 criminal charge, the raid was carried out premised upon the information as recorded in the said Form 5 which was to do with an offence pursuant to s. 28 of the Act 559, *ie*, men acting as women, which is a non-seizable offence as it is punishable with imprisonment not exceeding one year (see s. 2 of the Syariah CPA (Act 560)). The learned Magistrate had mistakenly referred to s. 2 of Act 559 in his grounds of judgment (CBOD2 p. 11 para. 23) but nothing turns on this. As a non-seizable offence, the raiding team ought to be armed with a warrant and a search warrant but they were not. Besides holding that the prosecution's witnesses had given contradictory evidence as to whether the raid was done pursuant to ss. 28 or 9 of Act 559, the learned Magistrate went on to hold that as the event was a closed door event, there was a breach of procedure when the raiding team failed to obtain an arrest or search warrant before carrying out the raid (CBOD2 p. 12 para. 26); and

(iv) similarly, from the evidence led in this action, in the testimony of the

A plaintiff as well and D1 and D2, I find that the raid was premised on the impugned Form 5 and that the raiding team was, thus, not lawfully carrying out their functions as public officers when they failed to first arm themselves with an arrest or a search warrant.

B **[117]** There is compelling evidence produced by the plaintiff as well as that admitted by DW2 (D20), and from the police report (CBOD1 pp. 2 to 4) of the raiding officer (DW2), that the participants of the beauty pageant were all men dressed as ladies or "Mak Nyah".

C **[118]** In fact, the defendants themselves in their closing submissions (encl. 177 para. 20 p 21) highlighted that D1 upon being asked by the plaintiff: "Kenapa datang sini dan atas kuasa apa?" said "... Saya terangkan kepadanya ini satu pertandingan ratu cantik mak nyah dan ia merupakan satu kesalahan di bawah s. 9 Akta Kesalahan Jenayah Syariah Wilayah Persekutuan 1997 iaitu mengingkari pihak berkuasa agama".

D **[119]** Therefore, D1 to D14 under the supervision of D15 knew right from the outset that it is not a beauty queen competition involving female participants but decided, nonetheless, to proceed to disrupt the event. And, D20 to D22 and D24 similarly participated in the prosecution of the plaintiff under the s. 186 criminal charge knowing or at the very least, were recklessly indifferent to whether D1 to D15 were lawfully discharging public functions.

E *Whether The Plaintiff Was Arrested And Subjected To False Imprisonment. This Issue Will Include The Role Of That Of An Advocate And Solicitor In The Circumstances*

F **[120]** That the plaintiff was retained and attended the event as an advocate and solicitor was corroborated by PW2, a founding member of "justice for sisters" a human rights group representing trans women. PW2's evidence was that the plaintiff was invited to attend the event for the organisers in her capacity as a lawyer to provide *pro bono* legal services for the trans women, to guard them against arbitrary detention and arrests, humiliation and abuse
G of power by the authorities, which PW2 asserted, was a frequent occurrence at such events (see NOP vol. 1 pp. 297 to 299, 319, 328 to 330).

[121] PW3 gave the following corroborating evidence (encl. 143 NOP 402):

> ... because *I saw what happened di dalam dewan itu sendiri*, you know like they
H were literally shouting competition so to say lah, when Pn Siti was asking about the authorities why they are here semua itulah to it's detailed. So, that's what I saw and bila kata Pn. Siti Kasim be regarded as obstructing the works, I think she was sebab itu I cakap *I don't think she's obstructing the works, she was asking the ini bukan lawyer, the legality of them coming in lah, like what right, can you come in*, I mean I'm a layman that's how I look at it,
I of course dekat MAC kita pun ada juga slight background yang legal debriefing by Bar Council dulu, your rights apa semua itu. *So, I think she just wanted to know, katalah, katalah andaian ini, katalah misal, if they had a search warrant or something, I think there would not be any issue, I think that was*

to my mind that Siti was trying to find out lah from those officers actually. So, in that sense I do not think that she was obstructing, in fact she was asking information, she was asking the bona fide what right have you got to come in, I mean that's how I look at it actually.

Role Of A Lawyer

[122] From the evidence, the plaintiff has informed D1 that she is a lawyer. An express assertion by a solicitor to act for a client is sufficient to give rise to a solicitor-client relationship even if it is a single act, see *Gurbachan Singh Bagawan Singh & Ors v. Vellasamy Pennusamy & Other Appeals* [2015] 1 CLJ 719; [2015] 2 AMR 1; [2015] 1 MLJ 773, para. 36b. See also *Lee Kuang Guat v. Chiang Woei Chien* [2021] 3 CLJ 237; [2020] AMEJ 1892; [2021] 3 MLJ 505, paras. 77 and 78, and *Syed Ahmad Imdadz Said Abas v. Imej Muhibah Sdn Bhd; Majlis Peguam Malaysia (Intervener)* [2021] 7 CLJ 125; [2021] 4 AMR 507; [2021] 10 MLJ 563 para. 36 (b), *Darshan Singh Khaira v. Majlis Peguam Malaysia* [2021] 10 CLJ 497; [2021] 8 AMR 705 para. 20.

[123] Under the Evidence Act 1950, Part II on Proof, Chapter III on Facts Which Need Not Be Proved, it is expressly provided under s. 57(1)(m) that the court must take judicial notice of advocates that appear before it. In other words, judges before whom individuals present themselves as advocates and solicitors are to take judicial notice of their capacity and not to question them. This reflects how high the regard is hard for members of the honourable legal profession.

[124] From the evidence presented including the video clips which gave a contemporaneous account of the event, there was no challenge by D1 and D2 as well as any of the other raiding officers that the plaintiff had represented herself as an advocate and solicitor for the organisers and participants of the event. I find that the assertion by D1 (DW1) during his testimony that the plaintiff did not give any proof during the event that she was an advocate and solicitor such as by producing a business or calling card, to be a belated assertion, and a mere afterthought.

[125] Such a lame excuse, in fact, leads me to draw the inference that D1 had belatedly recanted, realised the error of his action during the event, and that he ought to have been civil and courteous to the plaintiff who was there to practice her profession and look after the legal rights of her clients. And, that he ought to have acceded to her lawful requests for information on what he and the other officers (D1 to D14) wanted to do. In fact, when asked to clarify whether he had asked the plaintiff to verify that she is a lawyer after having been told that she is one, DW1 admitted that he did not (encl. 144 NOP vol. 4 p. 1202).

[126] From the evidence led, the plaintiff had put up a robust challenge in keeping with her professional duty, to act without fear or favour on behalf

of her clients (see *Latheefa Beebi Koya & Anor v. Suruhanjaya Pencegahan Rasuah Malaysia & Ors* [2013] 8 CLJ 855; [2013] 5 AMR 399; [2014] 7 MLJ 864, para. 26; *CIMB Islamic Bank Bhd v. Ravichantiran Ganesan* [2020] CLJU 415; [2020] 1 LNS 415; [2020] AMEJ 0340; [2020] MLJU 484), by lending her voice to ascertain on what grounds D1 to D14 sought to disrupt the said event. Her repeated requests were based upon a solid platform of exercising the fundamental liberties housed in art. 5(1) and (3) of the Federal Constitution which expressly provide that no person shall be deprived of his life or personal liberty save in accordance with law and where a person is arrested, he shall be informed as soon as may be of the grounds of his arrest and shall be allowed to consult and be defended by a legal practitioner of his choice.

[127] The defendants took the position that it is not a lawyer's duty to question the REOs whether the enforcement was lawful or otherwise during the carrying out of the enforcement operation. The following extracts of the evidence led from DW1 (D1) made this clear.

(Encl. 143 NOP pp. 1007 to 1008)

SDAA (counsel for the plaintiff) – Kalau En. Akmal tidak mempunyai kuasa di bawah undang-undang untuk berada di sana, kehadiran En. Akmal itu sendiri adalah salah dan menyalahi undang-undang setuju atau tidak?

SD1 (DW1/D1) – Tak setuju Yang Arif, *bukan tugas peguam untuk mempersoalkan sama ada penguatkuasa bertindak dengan betul ataupun tidak semasa operasi dijalankan* Yang Arif.

(Encl. 144 NOP pp. 1216-1217)

MAH (Court) – Baik, saya ingin dapatkan satu penjelasan daripada En. Akmal. Jikalau lah, peguam itu mempertikaikan keesahan, iaitu operasi yang dijalankan oleh En. Akmal, apakah yang perlu pada hemat kamu perlu yang dikehendaki dibuat oleh peguam untuk mempertahankan, pada hemat dia, beliau, untuk menjaga kepentingan anak-anak guam dia?

...

SD1 - Pada saya, sebab saya menjalankan operasi pada hari itu Yang Arif. Peguam patut benarkan kami untuk menjalankan tugas kami sehingga selesai Yang Arif, perkara yang dibangkitkan boleh di, di, ditimbulkan selepas operasi ataupun selepas tugas dilaksanakan Yang Arif.

(Encl. 144 NOP pp. 1231)

NMNK (defendants counsel) - Okay ya En. Akmal juga telah dicadangkan sekiranya kehadiran penguatkuasa pada hari itu adalah salah di sisi undang-undang, penguatkuasa tidak mempunyai kuasa untuk meneruskan operasi tersebut. So, En. Akmal menjawab bukan tugas peguam untuk mempersoalkan tugas so ada penjelasan lagi tentang ini.

SD1 - Yang Arif, *saya menegaskan lagi sekali bukan tugas peguam untuk memutuskan bahawa penguatkuasaan dibuat pada waktu itu adalah salah ataupun bertentangan dengan undang-undang sebab itu bukan tugas peguam. Persoalan betul ataupun tidak, adalah pada pandangan saya adalah di bawah bidang kuasa Mahkamah dan saya tegaskan bahawa Pegawai Penguatkuasa yang bertugas pada hari kejadian telah mengikut lunas undang-undang yang betul dan berdasarkan kepada prosedur operasi standard ataupun SOP yang digariskan, yang digunapakai oleh Pegawai Penguatkuasa. Jadi, apabila peguam memutuskan apa nama, operasi itu salah pada pandangan saya memang itu bukan tugas peguam. Bahkan, tindakan yang dibuat oleh peguam tersebut adalah menghalang penguatkuasa daripada menjalankan tugas.* (emphasis added)

[128] The plaintiff plainly disagreed as the following extracts from her evidence given under cross-examination revealed:

Encl. 141 NOP p. 219

NMNK (learned SFC)	:	Pn. Siti, if you keep asking, questioning the religious officer it will interfere them from doing their official duty, do you agree with that?
SP1 (plaintiff)	:	No.

Encl. 141 NOP pp. 228-229

NMNK	:	Who are you to stop the religious officer from doing their work?
SP1	:	I am a lawyer, I have the right to question any authorities if they are abusing their power.
NMNK	:	Under which law?
SP1	:	Under which law? I don't understand your question.
NMNK	:	What law authorize you to question all the.
SP1	:	Are you saying that I cannot question religious authority counsel?
NMK	:	Can you question the police if they want to issue a ticket to a traffic offender, can you question?
SP1	:	Yes, I can.
NMK	:	Under what law?
SP1	:	I can question any police who ask for a bribe, who try to bribe, who try give, taken because in expectation of a bribe, I can question that.
NMK	:	But you cannot prohibit them from doing their official duty, correct?
SP1	:	No, I can if they are not doing their official duty properly.

NMK : Who are you to ascertain that they are not doing their official duty.

SP1 : That's why I'm a lawyer counsel.

Encl. 141 NOP p. 240

SP1 : If I did not question, they would have arrested 200 of the participants that night.

NMK : Okay, you questioned the authority of the religious officer in confining the attendees?

SP1 : Questioning is not against the law counsel.

NMK : That's why I'm not saying it is against the law, I've never suggested that. Okay because of your query and questioning the act it means that you are not in a confinement at that part, were not confined at that phase at that particular time, you were not lawfully imprisoned at that time?

Encl. NOP pp. 260-262

NMK : Pn. Siti, the act of you in keep questioning and query about the authority despite their explanation by the religious officer is considered as intimidation to the religious officer, do you agree with that?

SP1 : I disagree, I was merely doing my duty as a lawyer.

NMK : Pn. Siti, after 1st Defendant and 2nd Defendant quoted s. 9 of Syariah Offence and quoted s. 18 of the Syariah Procedure, okay you did not offer any laws that, saying that they had no power to do so, do you agree with that?

SP1 : It is not my duty to offer any section or any laws to the enforcement officers of JAWI. My duty is to defend my clients on that particular night.

NMK : You had no authority to say that their reliance, 1st Defendant and 2nd Defendant on s. 9 and s. 18 at that night was incorrect.

SP1 : If they believe they have the right to do so under the laws they have describe, they have mentioned, they could continue and arrest all of the attendees, they did not.

NMK : So, Pn. Siti I put it to you that the act of all the Defendants in this case in coming to raid the place, in detaining you under s. 186 of the Criminal Procedure Code is merely carrying out their official duty, do you

agree with that? A

SP1 : I disagree, they have no right to arrest me under the Penal Code, it is not within their powers to do so.

[129] Learned counsel for the Malaysian Bar who were appointed as *amicus curiae* submitted strongly that they vehemently disagree with the statements made by DW1 that lawyers are not allowed to prevent illegal searches or raids from being undertaken against their clients and that the authorities have unfettered discretion. They submitted that "the powers of all authorities in Malaysia (including the defendants) are limited and fettered to the confines of the law and that it is in fact the statutory duty of lawyers to uphold the course of justice and the rights of their clients against illegal conduct by authorities". (Enclosure 154 pp. 8 and 9). Reliance was placed on the oft-quoted authority of *Pengarah Tanah Dan Galian, Wilayah Persekutuan v. Sri Lempah Enterprise Sdn Bhd* [1978] CLJU 143; [1978] 1 LNS 143; [1979] 1 MLJ 135 where Raja Azlan Shah CJM (as HRH then was) speaking for the Federal Court said these words which are now etched in the annals of legal history:

> Unfettered discretion is a contradiction in terms. My understanding of the authorities in these cases, and in particular the case of *Pyx Granite* (*ante*) *Pyx Granite Co Ltd v. Ministry of Housing and Local Government* [1958] 1 All ER 625) and its progeny compel me to reject it and to uphold the decision of the learned judge. It does not seem to be realised that this argument is fallacious. *Every legal power must have legal limits, otherwise there is dictatorship.* In particular, it is a stringent requirement that a discretion should be exercised for a proper purpose, and that it should not be exercised unreasonably. In other words, every discretion cannot be free from legal restraint; where it is wrongly exercised, it becomes the duty of the courts to intervene. The courts are the only defence of the liberty of the subject against departmental aggression. *In these days when government departments and public authorities have such great powers and influence, this is a most important safeguard for the ordinary citizen: so that the courts can see that these great powers and influence are exercised in accordance with law.* I would once again emphasise what has often been said before, that 'public bodies must be compelled to observe the law and it is essential that bureaucracy should be kept in its place' (per Danckwerts LJ in *Bradbury v. London Borough of Enfield* [1967] 3 All ER 434; 442). (emphasis added)

[130] Reliance was also placed on the authority of *Kerajaan Negeri Selangor & Ors v. Sagong Tasi & Ors* [2005] 4 CLJ 169; [2005] 5 AMR 629; [2005] 6 MLJ 289 where Gopal Sri Ram JCA (later FCJ) said:

> In a system of Parliamentary democracy modelled along Westminster lines, it is Parliament which is made up of the representatives of the people that entrusts power to a public body. It does this through the process of legislation. The donee of the power – the public body – may be a Minister of the Crown or any other public authority. The power is accordingly **held**

> **in** trust for the people who are, through Parliament, the ultimate donors of the power. **It follows that every public authority is in fact a fiduciary of the power it wields.** Sometimes the power conferred is meant to be exercised for the benefit of a section or class of the general public, as is the case here. At other times it is to be exercised for the general good of the nation as a whole, that it to say, in the public interest. **But it is never meant to be misused or abused.** And when that happens, the courts will intervene in the discharge of their constitutional duty.
>
> (emphasis added)

[131] The authorities of *Haris Fathillah Mohamed Ibrahim & Ors v. Tan Sri Dato' Sri Hj Azam Baki & Ors* [2023] 3 CLJ 653; [2023] 3 AMR 109; [2023] 2 MLJ 296; *Rosli Dahlan v. IG Tan Sri Razarudin Husain & Ors* [2025] 2 CLJ 115; [2024] 11 MLJ 381 were also cited to underscore the point that criminal investigative bodies, whenever they investigate anyone are bound to comply with the law.

[132] On duties of an advocate and solicitor, learned counsel from the Malaysian Bar acting as *amicus curiae* cited s. 42(1) of the Legal Profession Act 1976 (Act 166) as well as rr. 16 and 31 of the Legal Profession (Practice and Etiquette) Rules 1978 and the authorities of *Zainur Zakaria v. PP* [2001] 3 CLJ 673; [2001] 3 AMR 3149, *Law Chen Soon & Anor v. Lee Fook Leong* [2021] CLJU 2418; [2021] 1 LNS 2418, *Chin Hein Chong v. Tey Sin Sze & Anor* [2017] 4 CLJ 348; [2017] 2 AMR 915, to advance the legal principle that:

(i) an advocate and solicitor should uphold the cause of justice without fear or favour;

(ii) while acting with all due courtesy to the tribunal before which he is appearing, fearlessly uphold the interest of his client, the interest of justice and dignity of the profession without regard to any unpleasant consequences to himself or to any other person; and

(iii) shall at all times uphold the dignity and high standing of his profession.

[133] Reference was also made to the case of *Pett v. Greyhound Racing Association Ltd* [1969] 1 QB 125, where the following extract from the speech of Lord Denning on the importance of the right to speak by counsel resonates well with this court:

> It is not every man who has the ability to defend himself on his own. He cannot bring out the points in his own favour or the weaknesses in the other side. He may be tongue-tied or nervous, confused or wanting in intelligence. He cannot examine or cross-examine witnesses. We see it every day ... If justice is to be done, he ought to have the help of someone to speak for him. And who better than a lawyer who has been trained for the task. I should have thought, therefore, that when a man's reputation or livelihood is at stake, **he not only has a right to speak by his own mouth. He also has the right to speak by counsel or solicitor.**
>
> (emphasis added)

[134] It was brought to the attention of this court that Malaysia has adopted the United Nation Basic Principles on the Role of Lawyers ("the Basic Principles") at the Eighth United Nation Congress on the Prevention of Crime of Offenders 1990 wherein the following articles are of relevance:

> 12. Lawyers shall at all times maintain the honour and dignity of their profession as essential agents of the administration of justice.
>
> 13. The duties of lawyers towards their clients shall include:
>
> (a) Advising clients as to their legal rights and obligations, and as to the working of the legal system in so far as it is relevant to the legal rights and obligations of the clients;
>
> (b) **Assisting clients in every appropriate way,** and taking legal action to protect their interests;
>
> (c) Assisting clients before courts, tribunals or administrative authorities, where appropriate.
>
> 14. Lawyers, in protecting the rights of their clients and in promoting the cause of justice, **shall seek to uphold human rights and fundamental freedoms recognized by national and international law and shall at all times act freely and diligently in accordance with the law** and recognized standards and ethics of the legal profession. (emphasis added)

[135] In the UK in *Regina (Thompson) v. Chief Constable Of Northumbria Police* [2001] 1 WLR 1342, the Court of Appeal held that how a legal advisor chooses to provide advice is primarily for him to determine. It is only where there is significant interference with an investigation that the police should intervene, and it is the duty of the police to ensure access to independent legal advice. And, it is the solicitor's duty to ensure that independent advice is provided. The interest of the police is however catered for by the police being able to make a complaint to the Law Society which in Malaysia would be the advocates and solicitors' disciplinary board.

[136] The House of Lords in *Rondel v. Worsley* [1969] 1 AC 191 and *Medcalf v. Mardell & Ors* [2003] 1 AC 120 para. 51 opined that every counsel has a duty to his client fearlessly to raise every issue, advance every argument and ask any question, and the duty of the advocate is with proper competence to represent his lay client and promote and protect fearlessly and by all proper and lawful means his lay client's best interests. This is a duty which the advocate owes to his client but it is also in the public interest that the duty should be performed.

[137] And, the Indian Supreme Court in *Sri Jayendra Saraswathy Swamigal, Tamil Nadu v. State Of Tamil Nadu & Others* [2006] (1) SRJ (Crl) 533 held that:

> It is elementary that if a lawyer whom the accused has engaged for his defence is put under a threat of criminal prosecution, he can hardly discharge his professional duty of defending his client in a fearless

manner.

[138] Whilst the principle relied upon were distilled from the authorities which suggest that the courts had made such comments on the legality of the acts of the public authorities or investigative bodies *ex post facto*, *ie*, when the acts complained of are being considered after the event and in a court or tribunal, in my considered view, the words "personal liberty" and "be defended" housed with Part II of the Federal Constitution on fundamental liberties ought to be read expansively. In the context of this case, the REOs in the form of D1 to D14 when queried by the plaintiff, were not able to come up with a satisfactory answer on why they are disrupting the event save for D1 to assert "Miss World, Miss World" and a purported contravention of a fatwa to deprive the participants of their personal liberty to enjoy a private event, undoubtedly organised with much time and costs. In *Gin Poh Holdings Sdn Bhd v. The Government Of The State Of Penang & Ors* [2018] 4 CLJ 1, the Federal Court held:

> [48] It is trite that a constitution is *sui generis* and calls for principles of interpretation of its own. The constitution should be construed broadly and not pedantically, with less rigidity and more generosity than statutes. Regard must be given to the language used (*Minister of Home Affairs v. Fisher* [1980] AC 319, *Dewan Undangan Negeri Kelantan & Anor v. Nordin Salleh & Anor (1)* [1992] 2 CLJ 1125; [1992] 1 CLJ (Rep) 72; [1992] 1 MLJ 697, *Badan Peguam Malaysia v. Kerajaan Malaysia* [2008] 1 CLJ 521; [2008] 1 MLJ 285, *Palm Oil Research and Development Board Malaysia & Anor v. Premium Vegetable Oils Sdn Bhd* [2004] 2 CLJ 265; [2005] 3 MLJ 97). Per Raja Azlan Shah AG LP (as His Royal Highness then was) in the leading case of *Dato' Menteri Othman Baginda & Anor v. Dato' Ombi Syed Alwi Syed Idrus* [1984] 1 CLJ 28; [1984] 1 CLJ (Rep) 98; [1981] 1 MLJ 29 at 32:
>
> > In interpreting a constitution two points must be borne in mind. First, judicial precedent plays a lesser part than is normal in matters of ordinary statutory interpretation. Secondly, a constitution, being a living piece of legislation, its provisions must be construed broadly and not in a pedantic way – 'with less rigidity and more generosity than other Acts' (see *Minister of Home Affairs v. Fisher* [1979] 3 All ER 21. A constitution is *sui generis*, calling for its own principles of interpretation, suitable to its character, but without necessarily accepting the ordinary rules and presumptions of statutory interpretation.

[139] It will be recalled that the Federal Court had in *Lei Meng v. Inspektor Wayandiana Abdullah & Ors And Other Appeals* [2022] 3 CLJ 177; [2022] 2 AMR 733 paras. 136 to 138, made it clear that once the validity of a detention is challenged, the detenu has the Constitutional right to judicial scrutiny over the legality of his or her initial detention from the lens of the detenu to give full effect to art. 5(2) of the Federal Constitution. Thus, at the very outset of any detention, the detenu would be entitled to challenge his detention and he must be given the right to be defended by a lawyer of his choice and in this case, the lawyer is the plaintiff.

[140] The robust challenge by the plaintiff in the form of queries is well grounded. In my considered view, "be defended" in art. 5(3) of the Federal Constitution should not be read restrictively to mean to defend the participants only in a trial in a court room. DW1's testimony that:

(i) bukan tugas peguam untuk mempersoalkan sama ada penguatkuasa bertindak dengan betul ataupun tidak semasa operasi dijalankan;

(ii) peguam patut benarkan kami untuk menjalankan tugas kami sehingga selesai ...; and

(iii) bukan tugas peguam untuk memutuskan bahawa penguatkuasaan dibuat pada waktu itu adalah salah ataupun bertentangan dengan undang-undang sebab itu bukan tugas peguam.

is misplaced. In this regard, I gratefully accept the submissions presented by learned counsel *cum amicus curiae* from the Malaysian Bar that the duty of a lawyer includes being able to reject any searches, raids or seizures which are illegal and *ultra vires* the powers under which an enforcement agency seek to act, see in particular, *Bar Malaysia v. Ketua Pengarah Hasil Dalam Negeri* [2018] 4 CLJ 635; [2018] 3 AMR 439 and affirmed on appeal by the Court of Appeal in *Ketua Pengarah Hasil Dalam Negeri v. Bar Malaysia* [2022] 1 CLJ 81; [2021] 8 AMR 872; [2022] AMTC 1, and the Federal Court (Rayuan Sivil No: 01(f)-11-09-2021(W).

[141] This brings to mind, the age old wise saying that "prevention is better than cure", *ie*, that it was right for the plaintiff in the exercise of her profession as an advocate and solicitor to do her best to try to discuss with the REOs, to prevent the trans women against arbitrary and unlawful detention. To stand quietly aside and allow what to her mind would be an unlawful deprivation of personal liberty and then to pursue legal redress with its attendant distress both physical and mental as well, loss of time better spent elsewhere and costs, may be too late.

[142] More so, when the following incidents of infamy have made their way into the law reports and of which judicial notice is taken, and those in the legal profession would be aware, of abuse of power by rogue enforcement officers:

(i) of judicial notice having been taken of some police officers who seem to have a cultural habit of being oppressive and inflicting physical assaults on suspects and detainees (*N Indra Nallathamby v. Datuk Seri Khalid Abu Bakar & Ors* [2013] 6 CLJ 272; [2013] 4 AMR 585 or known as *Kugan*'s case);

(ii) even of cases of death in custody (*Kugan*'s case (*supra*); *Natthanan Yoochomsuk & Anor v. Insp Mohd Noor Husri Johari & Ors* ("*Balamurugan*'s

A case") [2024] 9 CLJ 546; [2024] 7 AMR 46;

(iii) of incidents of rape and sexual assault whilst being detained (*PP v. Emran Nasir* [1986] CLJU 69; [1986] 1 LNS 69; (KL HC WA-23NCvC-23-04-2020) and (KL HC WA-23NCvC-24-04-2020); and

B (iv) an enforcement officer taking photographs of a detainee urinating in the truck used to transport the detainees, as the detainee could not control the urge to urinate, see *Maslinda Ishak v. Mohd Tahir Osman & Ors* [2009] 6 CLJ 653.

[143] To my mind, contrary to the assertion by the defendants that the C plaintiff was aggressive, provocative and obstructive, from the evidence led including the repeated viewing of the video of the raid of the event, the conduct of the plaintiff, if I may borrow a phrase used by the former Chief Justice, Tun Tengku Maimun Tuan Mat, in *Ketheeswaran Kanagaratnam & Anor v. PP* [2024] 2 CLJ 341; [2024] 1 AMR 953 at paras. 119, 120 and D 121, was such that she had conducted herself in a balanced manner in seeking to triangulate rights, that of the REOs, the public interest and that of her clients with her there as an advocate and solicitor to contribute towards the principle of equality of arms and facilitating access to justice.

[144] In the circumstances, on the facts that obtain in this case, the case of E *Kam Teck Soon v. Timbalan Menteri Dalam Negeri Malaysia And Other Appeals* [2003] 1 CLJ 225; [2003] 1 MLJ 321 relied upon by the defendants is readily distinguishable as *Kam Teck Soon* was to do with a challenge to a purported arrest pursuant to s. 3(1) of the Emergency (Public Order and Prevention Crime) Ordinance 5, 1969 that the grounds for the arrest was not informed F to the arrested person and the Federal Court held that s. 3(1) of the Ordinance prevails over art. 5(3) of the Federal Constitution and, in any event, what the arresting officer had informed the appellant was sufficient compliance with art. 5(3).

Plaintiff Arrested

G **[145]** I am satisfied that the plaintiff has proved on a balance of probabilities that the plaintiff was arrested and subjected to false imprisonment by D1 and D2, when she stepped out of the ballroom together with Ira Sofea right up until they were taken to the Dang Wangi Police Station before she was released on police bond at 2.30am on 4 April 2016.

H **[146]** DW1 admitted during his testimony that he had arrested the plaintiff. He said:

> **Plaintiff bertegas dan bertanya adakah dia juga ditahan. Saya menjawab ya** dan memberikan alasan tahanan adalah kesalahan di bawah s. 186 Kanun Keseksaan. (emphasis added)

I **[147]** Despite the defendants themselves having highlighted this piece of evidence, for the defendants to assert in their submissions (encl. 177 para. 8 p. 3) that the plaintiff was never arrested, is without merit. In fact,

in their submissions (encl. 158 para. 49) the defendants conceded that D2 had touched the plaintiff at the staircase of the hotel. Such an act is sufficient to constitute an arrest pursuant to s. 10(1) of the Syariah CPA (Act 560) which is similar to s. 15(1) of the CPC save that the Syariah CPA (Act 560) make reference to REO and the CPC makes reference to a police officer.

Whether There Was Misfeasance In Public Office

[148] In my considered view, there has been misfeasance in public office by D1 to D14 in carrying out a raid, confining the participants in the ballroom during the said event without ensuring that the huge power they have were being enforced lawfully and in the process subjecting the plaintiff to being deprived of personal liberty whilst she was discharging her duty as an advocate and solicitor.

[149] Besides D1 and D2, no evidence was led from any of the raiding officers in the form of D3 to D14 to rebut the positive evidence led by the plaintiff that during the time of the raid, they had secured the doors leading to the ballroom, and confining the guests therein. Thus, with I having held that D1 and D2 have wrongfully confined the plaintiff in the ballroom, and they having participated in the tort of misfeasance in office in carrying out a raid under a misconceived offence, they are similarly liable but to a lesser degree.

[150] Guided by the test in *Datuk Seri Khalid Abu Bakar & Ors v. N Indra Nallathamby & Another Appeal* [2014] 9 CLJ 15; [2014] 5 AMR 657; [2015] 1 MLJ 353 para. 33 cited by the defendants (encl. 158 para. 72) but contrary to the assertion by the defendants, I find there was malice on the part of the defendants in having the plaintiff arrested when she was discharging her duties as an advocate and solicitor. To assert that she was obstructing the REOs and causing the raid to be a failure is farcical, when they were able to seize the materials for the event such as the trophies and medals and arrested Ira Sofea, and with them outnumbering the plaintiff, 14 to one with the doors all guarded to prevent any attendees from leaving the ballroom.

[151] The plaintiff has aptly placed reliance on *Government Of Malaysia v. Lim Kit Siang & Another Case* [1988] 1 CLJ 219; [1988] 1 CLJ (Rep) 63; [1988] 2 MLJ 12, where the Federal Court held that public authorities must act fairly, reasonably, and in good faith; an abuse of power done maliciously or in bad faith is actionable. As submitted by the plaintiff (encl. 173 para. 17c), the defendants acted either knowingly or recklessly without regard to the legality of their actions, and with the specific intention, or reckless indifference, and conducted themselves with such high-handedness despite the plaintiff having notified them that she is an advocate and solicitor being present and requesting for justification and clarification as to the legality of their actions, particularly, under Act 559, and ultimately causing harm to the

A plaintiff.

[152] I am satisfied that in the circumstances, the plaintiff has proved on a balance of probabilities the assertion of misfeasance in public office grounded on the particulars housed in para. 29 of her amended statement of claim (A pp. 46 to 48).

B

Whether There Was Malicious Prosecution

[153] I accept the submissions by learned counsel for the plaintiff on DW2 (D20 and narrated above, that despite his own misgivings that there was no offence committed, he had proceeded to charge the plaintiff. This is borne
C out by the evidence given by DW2's during his lengthy cross-examination (encl. 144 NOP in particular at pp. 1366 to 1380). That despite investigations into the elements to support a charge under s. 186 of the Penal Code had not been completed and with there being insufficient evidence to support such a charge, he did so based upon his instructions from his
D superiors (encl. 144 NOP pp. 1379 and 1380). DW2 admitted that the alleged provocation made by the plaintiff, if any, was her asking for the warrant and what was the alleged offence for the raiding team to be there at the event.

[154] The following concessionary testimony was elicited from DW3 (D24)
E under cross-examination (encl. 143 NOP pp. 804 and 811 lines 18 to 22, p. 812 lines 1 to 12, p. 813 lines 21 to 27 and onto p. 814 lines 1 to 4):

(i) she agreed that the raid of the event at the ballroom has comply with the Syariah laws;

F (ii) if the raid was not in accordance with Act 559 she agrees that the raid would not be lawful;

(iii) she agrees that the prosecution has to first ascertain whether the enforcement officer from JAWI has lawfully carried out his duties for a charge under s. 186 of the Penal Code;

G (iv) in taking the instructions to prosecute and for her to continue prosecuting, she did not take into account who were the participants, whether they are Mak Nyah (trans women) or not (encl. 143 NOP pp. 846 and 847);

H (v) the evidence led from SD5 during the prosecution of the s. 186 criminal charge was that the ballroom was guarded;

(vi) she did not know whether the functions carried out by the enforcement officers were in compliance with the Syariah laws;

(vii) she added she has no capacity to answer what are the ingredients
I required for an offence under s. 28 of Act 559, that of male person

posing as a woman (encl. 143 NOP pp. 803 and 853), and under s. 9 that of breach of a fatwa (encl. 143 NOP p. 855);

(viii) that from the video recording of the event, the plaintiff could be heard to be said the Miss World event is a "Miss World pretend" (encl. 143 NOP p. 859);

(ix) the focus of the raid was on the Mak Nyah participants on the stage and the dinner (encl. 143 NOP p. 860);

(x) from the intelligence gathered the beauty queen contest would be one involving Mak Nyah, *ie*, men dressing as women (encl. 143 NOP pp. 869 and 870); and

(xi) she does not know that at the time of the bringing of the prosecution against the plaintiff whether there was any fatwa that prohibits any beauty queen contest involving men and she did not take any steps to ascertain this (encl. 143 NOP pp. 870 and 871).

[155] I further find the timing of the prosecution against the plaintiff commencing on the same day that she obtained an order for discovery of who were the officers who made up the raiding team to be too much of a coincidence.

[156] The aforesaid testimony of DW3 made it clear that in conducting the prosecution against the plaintiff in the s. 186 criminal charge, the prosecution was hopelessly not prepared at all to ensure that the requisite essential ingredients including that of the public officers said to be obstructed were discharging their public functions.

[157] DW3 in her testimony said that the event was a "ratu cantik", *ie*, a beauty queen pageant despite the overwhelming evidence that it was a mock show participated by men dressed in women's clothes and described as "pertandingan ratu cantik mak nyah" in D2's police report, the prosecution proceeded against a lawyer who was doing her job to try to prevent arbitrary and unlawful disruption of the said event. There was no reasonable cause to proceed with the prosecution and the tinning to proceed with the prosecution is evidence of malice.

[158] All the aforesaid evidence narrated above amply supports the plaintiff's case for malicious prosecution.

[159] The defendants asserted that the plaintiff's failure to name the tortfeasor as a party to the action to be non-curable and is fatal to her action (encl. 177 paras. 56 to 69). They assert that the tortfeasor was D23 who was the Deputy Public Prosecutor who charged the plaintiff (encl. 177 para. 58) and who was by consent struck out as a party to this action. In my considered view, this assertion is without merit because the person who set the criminal law in motion against the plaintiff was in fact D2 who lodged the police report (CBOD pp 2 to 4) against the plaintiff. D20, D22 and D24 were joint

tortfeasors together with the learned DPP Liyana Zawani (D23) who initiated the prosecution are named in this action, and it is not necessary to sue each and every joint tortfeasor. This court had in *Komallapalli Subramanyam & Anor v. Rajdeep Sharma Singh & Ors* [2024] CLJU 2034; [2024] 8 AMR 409; [2024] MLJU 2390 para. 50 held that:

> [50] With utmost respect, it is indisputable that the cause of action for malicious prosecution is a tort. In a suit for tort, there is no necessity for all the concurrent or joint tortfeasors to be sued in the same action. In passing, it deserves mention that there is a difference between concurrent and joint tortfeasors, see the *Balamurugan*'s case published as *Natthanan Yoochomsuk & Anor v. Insp Mohd Noor Husri Johari & Ors* [2024] CLJU 1659; [2024] MLJU 1849; [2024] MLRHU 1371; [2024] AMEJ 1718 (HC) at para 103 and 104. *Under s. 10(1)(a) of the Civil Law Act 1956, it is expressly provided that a judgment recovered against any tortfeasor liable in respect of that damage shall not be a bar against any other person who would, if sued, have been liable as a joint tortfeasor in respect of the same damage. Thus, it is clear that the plaintiffs can sue whichever tortfeasor they wish and the second and third defendants could have sought contribution and indemnity if they were so minded to do so pursuant to s. 10(1)(c) of the Civil Law Act 1956* which provides as follows:
>
> > (c) any tortfeasor liable in respect of that damage may recover contribution from any other tortfeasor who is, or would if sued have been, liable in respect of the same damage, whether as a joint tortfeasor or otherwise, so, however, that no person shall be entitled to recover contribution under this section from any person entitled to be indemnified by him in respect of the liability in respect of which the contribution is sought.
>
> (emphasis added)

[160] In my considered view, the plaintiff has proved on a balance of probabilities the necessary ingredients for a cause of action grounded on malicious prosecution. The person who set the criminal law in motion was in fact D2 who lodged the police report against the plaintiff. D20, D21,22 and D24 were joint tortfeasors together with the learned DPP Liyana Zawani who initiated the prosecution, and it is not necessary to sue each and every joint tortfeasor, (see *Komallapalli Subramanyam & Anor v. Rajdeep Sharma Singh & Ors* [2024] CLJU 2034; [2024] 8 AMR 409; [2024] MLJU 2390 para. 50.)

Good Faith

[161] The defendants have sought to rely upon the defence of good faith provided by the Government Proceedings Act 1956 (Revised 1988) (Act 359). Such a defence is unacceptable when the initiation of the raid was not done in accordance to law when the REOs could not explain why they were not armed with a search or arrest warrant when the raid was premised upon a non-seizable offence under s. 28 of Act 559 as set out in the impugned Form 5, and even if at all, the impugned Form 5 is valid.

[162] It was held by the Court of Appeal in *CIMB Islamic Trustee Bhd v. Pendaftar Hakmilik Negeri Selangor & Ors* [2022] 4 CLJ 499 para. 57 that the burden to prove good faith under s. 22 of the National Land Code where the statutory defence of good faith is also provided, lies on the land officials to prove and if they fail to discharge such a burden, they were not entitled to the protection under s. 22 of the NLC. See also (i) *Pendaftar Hakmilik Negeri Selangor & Ors v. Shaifulizam Mohd Saleh & Anor And Another Appeal* [2020] 5 CLJ 595; [2020] AMEJ 0139; [2020] 5 MLJ 1 at paras. [16] and [35] to [39]; (ii) *Hartalega Sdn Bhd & Anor v. Kerajaan Negeri Selangor & Ors* [2020] 7 CLJ 735; [2022] AMEJ 0681 at paras. [41], [59] to [61]; [2022] MLJU 1189; and (iii) *Lim Peng Khoon v. Tea Chun Hia & Ors* [2023] CLJU 722; [2023] 1 LNS 722; at paras. [93], [102] to [104].

[163] In this case, I find that the defendants have failed to discharge this burden. Their case, to put it bluntly, is one of shoot first and explain later and even when given an opportunity to explain, they were not able to do so.

Whether Vicarious Liability Ought To Be Found Against D15, D17 to D19

[164] In my considered view, in the circumstances of this case with D1 to D14 purporting to act under the supervision and behest of D15, and for an on behalf of D17 to D19, vicarious liability is found against them. Similarly, vicarious liability is found against D19 for the acts of D20, and against D19 and D21 for the acts of D22 and D24.

Immunity Against Personal Liability

[165] It is observed that s. 33(4) of the Government Proceedings Act 1956 (Revised 1988) (Act 359) ("GPA") immunises the individual public officer from being personally liable for payments for which the Government of Malaysia (D19) is liable. In *Natthanan Yoochomsuk & Anor v. Insp Mohd Noor Husri Johari & Ors* [2024] 9 CLJ 546; [2024] 7 AMR 46, this court had made a further order that satisfaction of the judgment be first obtained against the culpable police officer who had beaten the detenu leading to his death before seeking satisfaction from the other defendants including the Government of Malaysia. Upon appeal to the Court of Appeal, this part of the order was by consent set aside on 6 May 2025, see Court of Appeal Malaysia, W-01(IM)(NCvC)-383-06-2024.

[166] In *Natthanan Yoochomsuk* (*supra*), this court had occasion to observe as follows:

> Public's Money
>
> [119] A troll through the law reports would show that in reflecting the court's abhorrence of the wrongdoing by those empowered by the Government or State or in the words of Lord Devlin in *Rookes v. Barnard*

A [1964] AC 1129 of "oppressive, arbitrary or unconstitutional action by the servants of Government" an award of exemplary damages is made. In certain circumstances where an award of exemplary damages cannot be made, the court makes an award of aggravated damages, see *Koperal Zainal Mohd Ali* (*supra*).

B [120] However, herein lies the irony. Whilst it is well and good that the court shows its abhorrence of the wrongdoing by those empowered by the Government by making an award of exemplary or aggravated damages against the defendants, including the Government of Malaysia, the damages is going to be satisfied with the public's money, *ie*, the money of the public whose interest these wrongdoers were supposed to look after C in the first place. It offends the concept of fairness, reasonableness and justice. In my considered view, the further order will serve as a more just and effective deterrent to prevent the repeat of such brutal acts being perpetrated in breach of the fundamental constitutional right to life by those thinking that any personal liability of theirs will be paid for by the Government.

D [121] Margaret Thatcher, the former Prime Minister of the United Kingdom, said a fundamental truth when addressing the Conservative Party Conference in 1983* when she said:

> Let us never forget this fundamental truth. The State has no source of money other than the money people earn themselves. If E the State wishes to spend more, it can do so only by borrowing your savings or by taxing you more. And it's no good thinking that someone else will pay [because] that someone else is you. There is no such thing as public money – there is only taxpayers money.
>
> *https://www.aei.org/carpe-diem/tribute-to-margaret-thatcher/

F [122] Consistent with the aforesaid fundamental truth is the further irony that the higher the abhorrence is shown by the courts in the form of a higher award of damages, the bigger would be the amount the public is being asked to pay – to pay for the misdeeds and wrongdoings of the servants of the Government. And, the High Court at Shah Alam found G two police officers, a political analyst and the Government of Malaysia jointly and severally liable to pay general, aggravated and exemplary damages in a combined sum of RM5,000,000, interest thereon at 5% from the date of the filing of the suit in 2007 until full settlement, and costs of RM25,000 for the unlawful killing of a Mongolian citizen, Altantuya Shaariibuu (see High Court at Shah Alam Civil Suit No. 21-120-2007 H judgment dated 16 December 2022 which is pending appeal in the Court of Appeal). It would most probably beggar belief and distress the sense of justice of the man on the street that he will be contributing towards the payment of damages ordered to be paid by the very person entrusted to protect him and who have been found liable for abusing such a power.

I [123] This fundamental truth was made mention in *Lucknow Development Authority v. MK Gupta* AIR 1994 Supreme Court 787; [1994] SCC (1) 243. In succinct language, KM Joseph J in *Vibin PV v. State Of Kerala* (HC) at para. 39 said:

In *Lucknow Development Authority v. M.K. Guptha* [1994] (1) SCC 243, the Supreme Court observed that when the court directs payment of damages or compensation against State, the ultimate sufferer is the common man. It is the taxpayers' money, which is paid for action of those who are entrusted under the Act to discharge their duties in accordance with law. We are inclined to keep this reality in our mind also. Therefore, we make it clear that it will be open to the Government to recover the amount, which is directed to be paid immediately by the first respondent, from respondents 5 to 7, after due enquiry and investigation.

[124] The facts in *Vibin PV* (*supra*) tell of a case of a young lawyer aged 25 who hails from a poor family of a backward community and who, whilst returning home one day on his motorcycle, was intercepted by a police squad on police duty. He was cane charged brutally and in the assault, he lost five teeth. The court held that:

We find that the petitioner is entitled to get compensation from the first respondent/State for the infringement of his right to life and personal liberty at the hands of the respondents 5 to 7.

Compensation: An order of payment of compensation would amount to enforcement of the rights that had been contravened. It is clearly a form of redress and it will be the only practicable form of redress. The enforcement of the constitutional right and grant of redress embraces award of compensation as part of the legal consequences of its contravention.

38. Lastly, what is the quantum of compensation? We feel that when considering quantum of compensation, his status, as a lawyer also having some relevancy, particularly when the act done by the respondents infringed his right to practice, his profession at least for a short period. Moreover permanent damages caused on the face of the petitioner is not denied by the respondents, and he is aged only 25. Replacement of 5 teeth is an expensive treatment also. None of the respondent disputed the life background of the petitioner. The victims who suffered physical as well as mental injury and pains at the hands of the Government servants due to abuse of power is entitled to get exemplary damages. Exemplary damages need not be calculated with reference to actual monetary loss suffered by the victim. *Public functionaries particularly police which is entrusted with protection of the people can never be violator of law and order.*

39. ...

40. Considering entire facts and circumstances of the case, we feel that an award of compensation of Rs.50,000/-, the relief which is prayed for, is just and proper to meet the ends of justice. We direct the first respondent to pay a compensation of Rs.50,000/- (Rupees fifty thousand only) to the petitioner within one month from the date of the judgment.

...

Other Jurisdictions

[128] In India, see *Lucknow Development Authority* (*supra*) and *Vibin PV* (*supra*), the court makes an award of compensation with an added order that the State is to secure contribution from the tortfeasors.

[129] In Canada, there is the Supreme Court authority of *Roncarelli v. Duplessis* [1959] SCR 121, where the plaintiff, the proprietor of a restaurant in Montreal, successfully sued and obtained a judgment for damages against the individual defendant who, without legal powers in the matter, had given orders to the Quebec Liquor Commission to cancel the plaintiff's licence to sell intoxicating liquor.

[130] In *England, the provisions of sub-s. 25(4) of the Crown Proceedings Act 1947 is similar to our sub-s. 33(4) of the GPA. The usual course is for the State to pay and then claim contribution or indemnity from the public servant,* see also *Wade and Forsyth Admin Law*, 12th edn Chap. 21. Subsection 25(4) of the Crown Proceedings Act 1947 reads:

> 25 Satisfaction of orders against the Crown
>
> (4) Save as aforesaid no execution or attachment or process in the nature thereof shall be issued out of any court for enforcing payment by the Crown of any such money or costs as aforesaid, and no person shall be individually liable under any order for the payment by the Crown, or any Government department, or any officer of the Crown as such, of any such money or costs.

[131] In the United States of America, the article written by the learned author Thomas A Eaton from the School of Law, University of Georgia on the "*Foreword: Symposium Re-Examining First Principles: Deterrence and Corrective Justice in Constitutional Torts*" 35 GA L Rev 837 (2001) ends with the following conclusion, which resonates well with this court:

> It is fitting that this Symposium concludes with the comments of Professor Marshall Shapo. It was Professor Shapo's scholarship that carved out constitutional torts as a distinct subject of academic inquiry more than thirty-five years ago. His observations today remind us that whether viewed through the lens of moral philosophy or economic theory, claims seeking redress for violations of constitutional rights are, and always have been, a species of tort. Thus, when re-examining first principles, we are inevitably informed and influenced by developments in this traditional first-year common law subject. Yet, Shapo puts his insightful finger on the distinctive feature of constitutional torts that makes it worthy of independent study: a governmental official inflicting indignities on a citizen who cannot defend herself, let alone retaliate. The constitutional tort provides a legal kicker in this type of case, precisely because of the relation of power – monopoly power, in fact – and vulnerability.
>
> *As long as governments and their officials have the potential to abuse power, there will be a need for a constitutional tort remedy.* As long as there remains a need for that remedy, periodic re-examinations of first principles, such as that contained in this Symposium, will invite

scholars and jurists alike to think seriously whether the law is achieving its stated purposes.

[132] *It is thus, timely, to re-examine the first principles on whether the immunity housed in sub-s. 33(4) of the GPA should be allowed to be enjoyed by a governmental official who is guilty of a constitutional tort.* (emphasis added)

[167] I reiterate what I have said in *Natthanan Yoochomsuk* (*supra*).

Summary

[168] Agreed issues to be tried (encl. 76) and this court's decision:

(i) if the plaintiff was arrested and/or detained whether D1 and/or D2 have any lawful grounds to detain and/or arrest her pursuant to s. 186 of the Penal Code.

Answer: Negative;

(ii) whether the plaintiff was carrying out her job as an advocate and solicitor when she was arrested.

Answer: Affirmative;

(iii) whether the plaintiff was arrested and/or detained without basis and/or wrongfully as from at or about 10.30pm on 3 April 2016 until on or about 2.30am on 4 April 2016.

Answer: Affirmative – as from the time when the plaintiff was outside the ballroom with Ira Sofea right up until they were taken to the Dang Wangi Police Station before she was released on police bond at 2.30am on 4 April 2016;

(iv) whether the plaintiff's right guaranteed under art. 5(1) of the Federal Constitution had been infringed by the defendants.

Answer: Affirmative;

(v) whether D1 to D14 have committed misfeasance in public office in confining and/or detaining and/or arresting the plaintiff.

Answer: Affirmative – for detaining and arresting the plaintiff outside the ballroom with Ira Sofea right up until they were taken to the Dang Wangi Police Station before she was released on police bond at 2.30am on 4 April 2016;

(vi) whether D20, D21, D22 and D24, severally or jointly had committed malicious prosecution against the plaintiff in Magistrates' Court Criminal Case No. WA-83-3479-06-2017.

Answer: Affirmative – with D2 setting in motion the criminal process for prosecution against the plaintiff and vicarious liability is found

against D19 for the acts of D2, D20, and against D19 and D21 for the acts of D22 and D24;

(vii) whether D15 and D19 are vicariously liable for being the party appointing D1 to D14 and D20 to D22 and D24.

Answer: Affirmative;

(viii) whether if any or all of the matters above is answered in the affirmative, whether D15 to D19, save for D16, or any of them are liable to the plaintiff vicariously.

Answer: Affirmative; and

(ix) whether the plaintiff is entitled to any or all damages as pleaded in the amended statement of claim paras. 30.1 and 30.2.

Answer: Affirmative.

Reliefs

[169] Wherefore, judgment is entered in favour of the plaintiff based upon the findings of the issues aforesaid against the defendants named jointly and severally as follows:

(i) general damages are compensatory and in this regard, the plaintiff has asserted that she has suffered mental anguish, nervous shock and humiliation over the torts of false imprisonment, malicious prosecution and misfeasance in public office, over the period in which this matter has been hanging over her head. She asserted she has no money to see a doctor for these complaints. In *Rawther v. Abdul Kareem* [1966] CLJU 154; [1966] 1 LNS 154; [1966] 2 MLJ 201, it was held that damages must be proved for malicious prosecution. I am of course, bound by this decision of the Federal Court under the doctrine of *stare decisis*, but the plaintiff has also suffered by reason of the torts of false imprisonment and misfeasance in public office;

(ii) however, general and aggravated damages are normally rolled up. I find that D1 (DW1) has given a narrative which is in direct contradiction with his testimony in the s. 186 criminal charge against the plaintiff in the Magistrates' Court, and this underscores that not only was there was no reasonable cause to detain the plaintiff but that the charge against her was actuated by malice and, to show disapproval of the same, I award the plaintiff a rolled-up award of RM60,000 by way of general and aggravated damages;

(iii) exemplary damages – contrary to the assertions by the defendants (defendants' submissions in E183 paras. 14 and 18), the plaintiff has pleaded a claim for "ganti rugi teladan", *ie*, exemplary damages in para. 32.2 of her amended statement of claim (A p. 31 para. 35.2), and

the factual matrix that obtain in this case qualifies the plaintiff for an award of exemplary damages as the loss was occasioned by the oppressive, arbitrary and unconstitutional conduct of Government servants resulting in a constitutional tort committed against the plaintiff, see *Tenaga Nasional Bhd v. Evergrowth Aquaculture Sdn Bhd & Other Appeals* [2021] 9 CLJ 179; [2021] 7 AMR 857 para. 101 and *Ketua Polis Negara & Ors v. Nurasmira Maulat Jaffar & Ors And Other Appeals* [2018] 1 CLJ 585; [2017] 8 AMR 829; [2018] 3 MLJ 184 paras. 65, 69, 71, *YB Teresa Kok Suh Sim v. Menteri Dalam Negeri, Malaysia & Ors* [2016] CLJU 1819; [2016] 1 LNS 1819; [2016] 5 AMR 217; [2016] 6 MLJ 352 paras. 72 and 73 and I award RM100,000; and

(iv) interest is awarded at 5% p.a. on the damages as from 21 August 2020 (the date the plaintiff was acquitted in the Magistrates' Court) until one day before judgment and thereafter at 5% p.a. on the judgment debt until full satisfaction.

[170] After hearing parties on costs, and upon being informed by learned counsel for the plaintiff that the costs for this action is being borne by the plaintiff personally, and consistent with my ruling in *Komallapalli Subramanyam & Anor v. Rajdeep Sharma Singh & Ors* [2024] CLJU 2034; [2024] 8 AMR 409; [2024] CLJU 2034, a case which was similarly grounded on malicious prosecution and which also ran for 14 days with costs awarded at RM100,000, I awarded a sum of RM100,000 subject to allocatur to be paid by the defendants to the plaintiff.

Conclusion

[171] For the reasons given, judgment is pronounced in favour of the plaintiff as aforesaid. This court thanks learned counsel for the plaintiff, the learned senior federal counsel and learned federal counsel for the defendants and learned *amicus curiae* from the Malaysian Bar for their helpful submissions. This court means no discourtesy to any of them for not making reference to the other cases cited by them which I feel is unnecessary premised on the grounds narrated above so as to avoid adding to the length of this judgment after going through the 22 volumes of submissions and bundles of authorities plus the five volumes of NOP.